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Disability, Policy, and Access in California Community Colleges: An Examination of
Language, Power, and Opportunity in Postsecondary Disability Policy

A Dissertation submitted in partial satisfaction
of the requirements for the degree of

Doctor of Philosophy

in

Education

by

Michael James Hoggatt

June 2016

Dissertation Committee:

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The Dissertation of Michael James Hoggatt is approved:

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ABSTRACT OF THE DISSERTATION

Disability, Policy, and Access in California Community Colleges: An Examination of
Language, Power, and Opportunity in Postsecondary Disability Policy

by

Michael James Hoggatt

Doctor of Philosophy, Graduate Program in Education
University of California, Riverside, June 2016
Dr. John S. Levin, Chairperson

Access to education has long been seen as a fundamental element of a developed country. Specifically, the relative availability and access to education by various constituent groups have been identified as an essential metric in educational evaluation. Yet, individuals with disabilities have been identified as being underrepresented within institutions of higher education, including the U. S. community college. Furthermore, scholars have also argued that discussion of disability remains on the margins of scholarship within academia. Therefore, this investigation employed qualitative methods by conducting a Critical Discourse Analysis of California Title 5 policies specific to disabled students in order to examine the socio-political space afforded to disabled students to navigate the institutional environment of the community college. Titchkosky's (2011) 4W Access framework and the concept of opportunity as developed

within Sen's (1992) Capabilities Approach provided the analytical frameworks for this investigation. Findings indicate that ideological constructs, inflexible funding models, and lack of integration shape access and opportunity negatively for disabled students in California community colleges.

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Chapter 1: Introduction

Access to education has long been seen as a fundamental element of a developed country. Specifically, the relative availability and access to education by various constituent groups (i.e., the poor, women, the disabled) have been identified as an essential metric in educational evaluation (Robeyns, 2011; Sen, 1999). As such, education has been argued as an economic imperative in creating a diverse and skilled labor force, necessary for sustaining an economy as well as developing one. Education has also been argued as a fundamental right to be accorded to all citizens within a specific geo-political boundary. Therefore, a lack of access to education denies the citizenry to either the economic tools needed to prosper and advance or fundamental rights necessary for full participation in society (Robeyns, 2011). Moreover, lack of access, or denial of full participation, consequently leads to more than missed opportunity. Rather, it leads to marginalization and wounding of an entire segment of society through deliberate acts of dominance orchestrated through policy actions (Thomas, 1999; Wolfensberger, 1972, 1995).

Perspectives on the use of education as either exclusively an instrumental tool for the advancement of human capital development or solely an intrinsic human right, according to Sen (1992, 1999), miss a larger, more nuanced, argument on justice and freedom (Robeyns, 2011). Therefore, Nobel laureate Amartya Sen developed a normative framework, known as the Capabilities Approach, as means in which to house discussions on inequality and justice (Robeyns, 2011). The Capabilities Approach offers a means for evaluating how a society provides opportunities for the citizenry, including

the most vulnerable or marginalized, to reach their full capacity. Sen (1999) further argues that education when seen purely as an economic tool, or as a right, limits the individual's potential capacity and fails to acknowledge benefits to education in allowing individuals "to be," or achieve, that which they are capable, or that which they desire (Nussbaum 2006, Robeyns, 2011; Sen, 1999).

Consistent with the argument that access to education is necessary for a free and democratic society, historically the U. S. community college has been the vehicle to provide postsecondary access to the widest possible range of the citizenry. Indeed, the U. S. community college has long been identified with its open access mission (Cohen, Brawer, & Kisker, 2013; Levin & Kater, 2013). Labels such as "the people's college" (Labaree, 1997) and "democracy's college" (Brint & Karabel, 1989; Diekhoff, 1950; Shaw, Valadez, & Rhoads, 1999) speak to this open access mission of the U. S. community college. This labeling is furthered by Shannon and Smith (2006) who assert that, "If there is one overarching concept that defines the community college, it is the open door mission (p. 20)." Furthermore, Bailey and Morest (2006) argue that the community college's open access mission is the reason the institution continues to hold an important place in higher education in that it acts as the primary point of entry for the most diverse learner groups (Bailey & Morest, 2006; Dowd, 2003). Rhoads and Valadez (1996) conclude that open admission policies, along with the diverse student bodies that accompany these policies, "represent higher education's commitment to democracy" (p. 7).

One group, however, continues to be overlooked within the discussions on access (or higher education in general)—students with disabilities (Amundson, 2010; Levin, 2014; Pena, 2014). Yet, even this group has benefitted, although with limits, from open access policies within higher education, generally, and the community college, specifically. Following the implementation of the Vocational Rehabilitation Act of 1973, including disability specific provisions in section 504, to the implementation of the provisions included in the Americans with Disabilities Act (ADA) of 1990, the percentage of first-time, full-time disabled students attending colleges and universities more than tripled from 2.6% to 9.2% (Henderson, 1999). By 1998, the full range of disabled students (i.e., part-time students and students enrolled in graduate programs) had risen to 10.5% of the postsecondary student population (Gajar, 1998). As a result of these increases in enrollment, by 2010 disabled students accounted for nearly 11% of all college students in the U. S., based on total enrollment (Newman et al., 2010; Raue & Laurie, 2011). Indeed, during the last quarter of the twentieth century, the number of disabled students in U. S. postsecondary institutions continued to grow at higher rates than non-disabled students (Brown, 2012). However, enrollments in higher education for disabled students have slowed in the first decade of the new century (Gajar, 1998; Newman et al., 2010; Raue & Lewis, 2011). Furthermore, despite enrollment gains, disabled students continue to be underrepresented within institutions of higher education (Brown, 2012). Yet, little is known as to the manner in which state and institutional specific policies shape the educational opportunities for these students.

Statement of the Problem

While the incidence of disability continues to grow nationally, the representation of disabled students in higher education has stagnated during the past 10-15 years, growing less than .5% in the years between 1998 and 2010 (Gajar, 1998; Newman et al., 2010; Raue & Lewis, 2011). Furthermore, disabled students continue to be an underrepresented group in higher education; as a result, studies have examined the college going experiences of disabled students and found that those enrolled face both institutional as well as attitudinal barriers in their quest to take advantage of educational opportunities (Brault, 2012; Brown, 2012; Duggan; 2010; Hall & Belch, 2000; Hart, Grigal, & Weir, 2010; Howlin, 2004; Mamiseishvili, & Koch, 2011; Marshak, Wieren, Ferrell, Swiss, & Dugan, 2010; Newman et al., 2010; Raue & Lewis, 2011; Snyder & Dillon, 2010; Strange, 2000). Yet, literature focused on the institutional policies and structures that affect disabled students in higher education has been lacking, as disability policy research has focused largely on employment policy. This creates a problem as the institutional policies form the frame in which the experiences of disabled students as well as the practices of disability professionals occur.

Furthermore, as disability policies center on both “access” and “accessibility,” it is necessary to understand the manner in which these terms are operationalized in both the literature as well as within policy development. The current failure to define or operationalize both terms adequately within the higher education literature, particularly as they relate to disabled students, presents a second problem.

Problem of Definition

A further problem within this investigation is the use of the term “disability.” While the definition of disability is not the focus or purpose of this investigation, the concept plays a significant role within this current investigation. Scholars have rightly noted the problematical nature of this term.

Disability is a controversial concept to define and measure. There is no universal agreement on the most appropriate definition of the population with disabilities, and no existing data source captures all of the aspects of disability for a representative sample of the United States population. (Houtenville & Burkhauser, 2004, p. 3).

Yet, while difficult, the meaning within this context must be addressed. According to Americans with Disabilities Act Amendments Acts (ADAAA) [P.L. 110-325], a disability is defined as: “a physical or mental impairment that substantially limits one or more major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment”(ADAAA, 2008, § 12102). However, the International Classification of Functioning argues that disability begins with a health condition that gives rise to impairments, and then to activity limitations and participation restrictions within a particular social milieu (Mitra, 2006). Still others, particular proponents of various social models, argue that disability is imposed on top of impairments through the barriers erected by society (Oliver, 1996). Whether or not disability is merely a diagnostic label of impairment or if physiological impairment and

disability are distinct from each other is often contested within the literature (Mitra, 2006.)

The problem of definition creates difficulty in researching policy related to disability. As such, I will not define who is and who is not disabled. This would impose my definition of what constitutes membership in an affinity group. To do so would be to participate in a history wherein experts without disability determine who has the right to their own identity. Yet, this does not resolve the central problem of use. As such, I will use the term as it appears in the literature. Higher education institutions claim to use the ADA (2008) definition as will I when making direct reference of postsecondary treatment, policies, and experiences. More importantly, however, is that through this investigation I will seek to explain the larger discourse on disability as utilized within U. S. institutions of higher education as well as the implications of definitions.

Significance of the Problem

This problem is significant because the lack of critical policy examination prevents both policymakers and practitioners from understanding, evaluating, or adjusting policy in a way that addresses structural and institutional issues relevant to the prevention of disabled students' ability to take advantage of educational opportunities. Furthermore, the absence of critical policy analysis at the state or institutional level prevents both policymakers and practitioners from connecting outcomes (student or professional) to the specific associated policies. Specifically, outcomes predicated on ill-defined, yet increasingly prevalent, concepts of "access" or "accessibility" fail to provide expected utility due to the lack of definition and connection back to institutional policies.

Studies indicate that professionals, acting as autonomous agents, have a high degree of discretion in the manner in which policies are enacted (Lipsky, 2010). However, the manners in which policies are created constrain both the policy options as well as the possible actions of autonomous agents (Lipsky, 2010; Stone, 2002). Therefore, a thorough examination of institutional policies is necessary in order to explain the practices that affect professionals and students alike.

Moreover, the significance of the problem is directly related to the condition whereby disabled students continue to miss out on educational opportunities. Thus, this prevents an entire, growing, segment of society from, as Sen (1992, 1999) argues, developing their capacity to be educated and to access all the benefits that accompany education for them and the society in general. The lack of opportunity for disabled students contributes to the continued marginalization of a vulnerable population thereby contributing to a lack of justice and human dignity (Nussbaum, 2006; 2000). Furthermore, lack of access and opportunity in higher education is inconsistent with two of the core goals of federal disability legislation (ADA): 1) equality of opportunity; and, 2) full inclusion (Silverstein, 2000).

Finally, the significance of the problem within U. S. community colleges, and California's community colleges in particular, which serves as the site for this investigation, is apparent in both the number of disabled students served in U. S. community colleges as well as the lack of representation associated with those numbers. In 2010, over 645,000 disabled students were enrolled in U. S. institutions of higher education (or 11% of the total U. S. student population) [Raue & Laurie, 2011].

Moreover, data indicate that approximately 317,000 of these students were enrolled in U. S. community colleges (Raue & Laurie, 2011). While nationally the percent of disabled students in U. S. institutions of higher education rose from less than 3% to over 9% in the years 1978 to 1994 (Henderson, 1999), eventually rising to nearly 11% by 2010 (Raue & Laurie, 2011), California presents a different and inconsistent picture. As of 2011, disabled students in California, according to numbers provided through the California Community College Chancellor's Office (CCCCO), accounted for approximately 4% of the total student population (CCCCO, 2013). Therefore, explanations of the policies associated with disabled students are both needed and significant at not only a national level but also within a specific institution of higher education such as the California Community College.

Purpose of the Study

The purpose of this current investigation is fourfold. First, since the Capabilities Approach (Robeyns, 2011; Sen, 1999) as well as the prevailing cultural, social, and minority models of disabilities (Ashmore & Kasnitz, 2014; Hahn, 1994, 1997; Oliver & Barnes, 2012) all place issues of access for disabled persons within the policies and structures of institutions, society, and the culture at large, this investigation seeks to explain disability policy within a specific higher education institution, the California Community College (CCC). Second, this investigation seeks to explain the ways in which policy design in CCC shapes educational opportunities, as well as barriers to opportunities, for students with disabilities. Third, this investigation seeks to explain the ways and extent to which policies and political discourses in CCC legitimate power

relationships between disabled students and the CCC, specifically in regards to disabled students' access to educational opportunities within CCC. Finally, this investigation seeks to expand the concepts of access and opportunities as used in conjunction with disabled students, specifically, but with all demographic subgroups who struggle with access and opportunity in general.

Significance of the Study

The proposed investigation will add to the existing body of scholarship within higher education by addressing the lack of literature on disability and higher education, specifically on policies relative to disability in higher education. Moreover, this investigation will help to clarify the often ambiguous definition of access within higher education and allow for a more consistent discussion within higher education scholarship. Furthermore, this investigation will explain how policies and structures aimed at contributing to social equality actually contribute to those aims. This investigation will also move the scholarship on disabled students from the margins of higher education literature (Pena, 2014) as well as the margins of scholarly discussion within the academy (Amundson, 2010) to a more central position in the scholarly literature. Finally, this investigation will serve to further theoretical knowledge by applying the Capabilities Approach toward individuals with disabilities and policies that shape their experiences within higher education.

Literature Review

In order to contextualize this study, I examine three distinct currents of scholarship. First, I review literature on access, both within higher education literature, as

well as within disability studies literature, in order to develop a definition of access upon which I can ground my conceptual definition of access. Second, I examine various disability literatures relative to legal constructions and applications of disability-specific laws such as the Americans with Disabilities Act (1990) and the ADAAA (2008) in order to place this investigation within a larger discourse on disability within the U. S. Finally, I review literature on policy development and pay particular attention to the interplay of ideological underpinnings and problem definition within policy studies scholarship which provides a context in which to explain the relationship between ideological constructs of disability and disability policy in CCC.

The literature on access in higher education suggests that scholars, generally, have approached higher education access through a deficit or trait lens, choosing to focus on a student's individual limitations as the reason for non-desired outcomes (Levin, 2014; Tierney & Hagedorn, 2002). Furthermore, models used to explain college choice (Hossler & Gallagher, 1987), or whether a student is "college qualified" (Berkner & Chavez, 1997), place the onus on the individual student without acknowledgement of policies, structures, or legislative forces on student opportunity. This is particularly the case in the context of California's community college as market ideals and neoliberal ideology exacerbate existing marginalization, exclusion, and oppression of disabled students within the institution (Levin, 2014; Oliver & Barnes, 2012; Oliver, 1990).

Yet, while the literature on access in higher education provides one perspective of access for disabled students, it fails to account for the way in which access is identified within disability studies scholarship. Legislation such as the American with Disabilities

Act (ADA, 1990) was constructed as an attempt to remove barriers to opportunities in education, among other capabilities, by premising the policies on core principles of equal opportunity and full inclusion (Marshak, Wieren, Ferrell, Swiss, & Dugan, 2010; Silverstein, 2000). Disability activists have “pressed forward a broad concept of equal access that has sought to guarantee full participation in society” (Longmore, 2009, p. 144). This idea of full participation in a social arrangement is a unique contribution by the disability rights movement to civil rights theory in so far as it moves the conversation from mere entrance to one of participation (Longmore, 2009). Furthermore, access as viewed in disability studies literature is a way that disabled individuals perceive, understand, and orient to social spaces within an institutional environment (Titchkosky, 2011, p. 3). As such, access is to be understood as more than a single act of inclusion or participation, but rather as comprehensive and ongoing (Titchkosky, 2011).

The scholarship on access within postsecondary institutions exists within the context of various federal laws designed to provide protections and safeguards for disabled students. However, a review of the court adjudications based on challenges to ADA (1990) and Section 504 of the Rehabilitation Act of 1973 indicate that ideological positions have led to contest over interpretations on two key tenets of federal legislations. First, the definition of disability has been contested both within the courts (e.g., *Sullivan v. City of Pittsburgh*, 1987) as well as within the literature (Jacob & Hartshorne, 2003; Kaplin & Lee, 2007; Wilhelm, 2003; Zirkel, 2009). Second, the meaning of “reasonable accommodation” has also been contested in both the courts (e.g., *Bird v. Lewis and Clark College*, 2002; *Guckenberger v. Boston University II*, 1997; *Wong v. Regents of*

University of California, 1999) and scholarship (Rose, 2013). The legislative review within the broader literature review provides an historical and legal context in which I place current CCC policies and practices.

Finally, I examine literature and scholarship on policy development and problem definition. While the traditional model for policy development and process has been viewed largely as cyclical, based on the work of Harold Laswell (1951; Kraft & Furlong, 2008), I examine literature in which policy development is viewed largely as a construct developed as a result of ideological definitions of social problems (Dery, 1984; Rochefort & Cobb, 1994; Stone, 2002). Once a problem has been defined it is placed on a policymaker's agenda through the acceptance or rejection of privileged arguments. Once an issue has been placed on the agenda, policymakers, informed by ideological constructs as well as concepts of power and position, posit a limited set of policy responses to the problem stemming from the aforementioned ideological constructs (Dery, 1984, 2000; Rochefort & Cobb, 1994; Stone, 1998, 2002; Weick, 1995; Weis, 1989). As such, policy actions can be seen as a logical extension of constructs embedded in ideology: specifically, for this investigation, ideological constructs of disability within an institutional framework.

Frameworks

In order to develop a context for my subsequent investigation, I examined literature focused on the issue of access within higher education (Adelman, 2003; Bailey & Morest, 2006; Dowd, 2003; Goldrick-Rab, 2010; Perna, 2006; Rosenbaum, Deil-Amen, & Person, 2006; Shaw & Goldrick-Rab, 2006; Tierney & Hagedorn, 2002). I

continued my review of access by moving from specifically higher education literature in order to focus on the concepts of access and accessibility from within the disability studies tradition (Jones, 1996; Marshak et al. 2010; Mitra, 2006; Oliver, 1990; Oliver & Barnes, 2007; Vance, Lipsitz & Parks, 2014). These two streams of literature allowed me to identify barriers to access from within the scholarship for use within this current investigation.

However, the analysis and theoretical underpinnings of this investigation were developed through the use of three distinct, yet related, conceptual frameworks. First, I examined literature on the concept of disability by explaining the commonly accepted models for disability within the literature (Aune, 2000; Denhart, 2008; Hahn, 1994, 1997; Mitra, 2006; Oliver, 1990) as well as how different ideological constructs of disability explain institutional policies directed at disabled students. These models allowed me to identify ideological underpinnings of disability policy. These models, with the scholarship on problem definition, then allowed for an explanation of how the ideological constructs of disability were present within CCC disability policy.

Second, I utilized Titchkosky's (2011) Access Framework as a means to explain access through the 4W approach to access (What, Where, When, Who). This allowed me to examine access as a construct with broader implications than merely enrollment or participation. Rather, I was able to use this framework in order to explain the socio-political space in which disabled students navigate institutional policies, as well as the space afforded to students through the same policies.

Finally, I examined the literature on theories of justice in so far as they provide a contextual lens for the explanation of issues of opportunity, access, and freedom for disabled students in higher education institutions. After reviewing competing theoretical frames in which to explain social justice (or the lack thereof), I employed the Capabilities Approach, developed by Amartya Sen, as a frame from which to evaluate and explain the spaces afforded to disabled students in relation to their opportunity to be educated, ability to navigate, and freedom to participate within institutional policies (Mitra, 2006; Nussbaum, 2006; Robeyns, 2003, 2011; Sen, 1992, 1999).

Research Questions

After a review of the scholarship on disability, access, and policy, I developed the following research question, as well as subsequent sub-questions, which served to guide the investigation. In what ways do California Community College (CCC) policy, structures, and practices shape educational opportunities for disabled students? How do institutional policies and structures reflect power relations within the CCC? How do these policies and structures reflect existing discourses relative to individuals with disabilities in higher education and the society at large? In what ways do ideological constructs shape policies of access in CCC? Does the placement of Disabled Students Programs and Services (DSPS) in categorical programming shape access for disabled students? If, so how?

Methodology and Methods

From a policy perspective, qualitative research is useful to identify current challenges within policy and identify sources of problems, as well as for the

determination of potential solutions. Thus, qualitative research methodology serves as an ideal choice for this investigation, which seeks to discover ways in which CCC have defined policy problems and converted federal/state mandates into policy, in relation to opportunities for disabled students to be educated.

Qualitative research has several essential characteristics, including the use of a natural setting, the researcher as a key instrument, multiple sources of data, inductive data analysis, a variety of participants' meanings, emergent design, at least one conceptual lens, interpretive inquiry, and a holistic account (Creswell, 2007; Mason, 2002; Maxwell, 2005). Moreover, Denzin and Lincoln (2005), Mason (2002), and Maxwell (2005) emphasize that qualitative research should be multi-method, involve an interpretive, naturalistic approach, and attempt to make sense of phenomena through the meanings people bring to them.

From among the several methods that can be used to conduct qualitative research, I determined a critical analysis of policy and political discourses to be an appropriate means for explaining how issues of dominance and marginalization are enacted through institutional policies (Ball, 2006; Fairclough & Fairclough, 2012; Fairclough, Mulderrig, & Wodak, 2009; van Dijk,, 2003; van Dijk, 2009).

The data sources I utilized were those of existing disability policy texts used in the CCC. I relied primarily on policies delineated within California Education Code Title 5, specifically those policies within Division 6 of Title 5 which govern the CCC. This included California Educational Code Title 5, Division 6, Chapter 7, Subchapter 1 (5 CCR § 56000-56076) and other reports, and policy documents specific to DSPS

operations. However, I also included those policies that are not included in Chapter 7 Subchapter 1, yet either related to disabled students in the policy scope or served to provide a contrast between similar policies, for example, California's Student Success Act of 2012 (Seymour-Campbell) as well as the Title 5 policies related to the Extended Opportunities, Programs and Services (EOPS), and learning assistance programs within the community colleges. These sources were identified and chosen based on my knowledge as a tenured faculty and department chair within DSPP as well as informal conversations with deans, directors, faculty, and staff associated with DSPP (both directly and indirectly) in the state. The use of select experts is consistent with "purposeful selection" (Cresswell, 2007, p. 97) that relies on experts to inform "selection decisions [which] require a considerable knowledge of the setting of the study" (p. 99).

This investigation sought to explain not only the ways in which CCC policy shapes access but also the ways in which disabled students are afforded justice (or not) consistent with the Capabilities Approach. Since "social power is based on privileged access to socially valued resources, such as wealth, income, position, status, force, group membership, education or knowledge" (van Dijk, 2003 p. 254), any analysis of policy must account for the manner in which access is politicized through an ideological lens. As such, I employed a critical analysis that drew on Fairclough and Fairclough's (2012) definition of critical social analysis as well as Ball's (2006) implementation of Policy Discourse Analysis. Critical theoretical approaches to social analysis must be normative and explanatory (Bohman, 2015; Fairclough & Fairclough, 2012). In other words, there is the need for a normative frame in which to provide a rubric from which to construct an

argument of social justice. Also, there is a need for a conceptual frame that explains why, or how, certain activities take place and thus lead to the argued injustice. For this investigation, I employed the Capabilities Approach as a normative lens and Titchkosky's (2011) access framework for use within a larger policy discourse analysis as a means for explanation.

Overview of the Study

This study is divided into six chapters. The first chapter provides an introduction that summarizes the research project. The second chapter offers a review of the literature. The third chapter explains the proposed conceptual and analytical frameworks used in reaching and explaining the findings. The fourth chapter details the methodological approach to the study. Chapter five details the findings of the study; and chapter six presents conclusions, recommendations for practice, and future research regarding policies that support opportunities for disabled students in community colleges, as well as disabled individuals in the broader societal context.

Chapter 2: Review of the Literature

The purpose of this literature review is to explore the literature on policy development, access, disability, and higher education, as well as that on theories of justice with the intention of establishing a context in which to place this investigation. As such, this review is divided into four distinct, yet complementary, parts. First, I review the literature on access within higher education (Adelman, 2003; Bailey & Morest, 2006; Dowd, 2003; Goldrick-Rab, 2010; Perna, 2006; Rosenbaum, Deil-Amen, & Person, 2006; Shaw & Goldrick-Rab, 2006; Tierney & Hagedorn, 2002), including the concept of access and opportunity within the disability studies tradition (Jones, 1996; Marshak et al. 2010; Mitra, 2006; Oliver, 1990; Oliver & Barnes, 2007; Titchkosky, 2011; Vance, Lipsitz & Parks, 2014). Next, I explore various federal laws (ADA 1990; ADAAA 2008) related to disabled students within institutions of higher education in order to contextualize this investigation within a larger legal discourse as it pertains to disabled individuals. Finally, I review literature on policy development paying particular attention to the interplay of ideological underpinnings and problem definition within policy studies scholarship (Anderson, 2006; Birkland, 2011; Kraft & Furlong, 2008; Rochefort & Cobb, 1994).

Access

While higher education scholarship often makes reference to access synonymously with participation (e.g., functioning), I explore a definition of access that moves from an outcomes view to one more synonymous with the essential freedom, or opportunity, available for an individual to be educated. Traditionally, scholarship within

higher education has viewed the community college's open-access mission as a given by both supporters as well as critics of open access policies (Dougherty, 1994; Labaree, 1997). However, I argue that participation premised on low admission standards does not capture the complexity of opportunity for an individual to be educated. Therefore, I offer an explanation based on barriers to access in order to explain how disability policies within higher education serve to promote capabilities or impede the essential freedom of an individual's opportunity to be educated.

Access in community colleges

There currently exists a tension within the community college literature between access/equity on the one hand and completion/outcome on the other hand (Dowd, 2003; Levin, 2014). This tension represents an historical conflict within the literature regarding the community college's role in society. Dougherty (1994) identified three competing typologies of community college scholars (Functional Advocates, Institutionalists, Instrumentalist Marxists), each group championing a view of the purpose and or mission of the community college. These typologies foreshadowed Labaree's (1997) typologies of community college mission and purpose (Democratic Equality, Social Mobility, Social Efficiency). Within each of these historical discussions, contradictions and conflicts have emerged relative to topics of access (equality, democratization) and outcome (mobility, success, completion).

Labaree (1997) located the creation of community colleges in a broader struggle among educational constituents for resources necessary to obtain the economic and social returns to schooling. In Labaree's (1997) framework, democratic equality goals are

evident in calls for equal access to schooling and full participation through education in political and civic life. Social efficiency goals are evident in concerns about workforce preparation, economic development, and the effective use of taxpayers' dollars. Social mobility goals seek to preserve the American dream of just rewards due to talented and hardworking individuals who attain social and economic status through achievement in the educational system. These typologies, while not adhered to rigidly in the following scholarly review, provide useful guidelines for reviewing both recent and historical literature.

As such, I draw upon the above-stated typologies as well as current community college literature in order to situate current scholarship within the larger discourse of both access and outcome. While placing current scholarship into perspective, I offer a critique of approaches (see Bailey & Morest, 2006; Dowd, 2003) which posit that equity and efficiency (i.e., access and outcome) can be compatible as a community college mission. I will then conclude by examining current policy and scholarship which presages future challenges to equity within U. S. community colleges.

One predominant theme in the scholarship has been a focus on the democratizing force of the access agenda within community colleges. These scholars have been characterized by Dougherty (1994) as functional advocates and by Labaree (1997) as emphasizing the "democratic equality" mission of the community college. As such, Dougherty (1994) argues that, while not necessarily constituting a cohesive theoretical unit, functional advocates have similar views on the social function played by access. Dougherty (1994) claims that, from the perspective of these advocates, the community

college “democratize[s] college access by being plentiful, nearby, and inexpensive, by offering vocational education and adult education in addition to more traditional college offerings, and by adhering to an ‘open door’ admissions policy that imposes few entry requirements” (p. 17). Consistent with the above trend are observations by scholars that echo the open admissions policy of the community college. Bragg (2001) argues that community colleges provide services for all community groups, therefore, “community colleges rarely exclude anyone from participation in course work on some level” (p. 67). While the above has been a generally recognized characteristic by scholars, recent scholarship has focused on access in more focused and nuanced ways, such as examining how access is accomplished or perceived by different types of students.

One example of this is Perin’s (2006) work on development/remedial education. Developmental education has been seen as central to the community college mission (Grubb et al., 1999), yet it has often been criticized for undermining local colleges’ commitments to transfer or degree attainment (Rhoads & Valadez, 1996). Yet, Perin (2006) argues that remediation (or developmental education) is integral to the open admission policy of community colleges and is a necessary service in the maintenance of the community college’s democratic (e.g., open access) mission (Perin, 2006).

However, much of new scholarship on access (or democratic equality) is not carried out by those Dougherty (1994) might label as “functional advocates.” Rather, a growing literature appears to build from the equity literature of the past and offers a defense for either strengthening and or reestablishing the open access mission of the community college in light of contradictory goals. These scholars attempt to make a case

for the vitality of the open access mission (Shannon & Smith, 2006) in light of eroding opportunities for certain student groups (Shaw & Goldrick-Rab, 2006). Furthermore, these scholars argue that, if not for the community college's open-access policies, significant numbers of diverse and traditionally underrepresented students would not otherwise participate in higher education (Goldrick-Rab, 2010). Valadez (2002) argues that while open admissions have eroded, "open access and educational opportunity remain a mantra for community college administrators" (Valadez, 2002, p. 36). The above sentiment is consistent with much of the recent scholarship on access within community college literature.

Historically, critics of the community college have argued that access is not the dominant goal or mission of the community college. Rather, following Labaree's (1997) typologies these critics focus on both social mobility and social efficiency goals within the community college. On the one hand, this critical scholarship (emanating from Institutional Critics of the community college) views the community colleges as "agencies for the management of ambition," reconciling students' high demand for, and society's limited supply of, college-level positions (Dougherty, 1994, p. 20). Yet, on the other hand, literature from Instrumentalist Marxists Critics "argue[s] that the community college upholds only in word, and vitiates in practice, the ideal of equality of opportunity. In their view, the community college's real social role is to reproduce the class inequalities of capitalistic society" (Dougherty, 1994, p. 18).

Within this vein, Labaree's (1997) conceptualization of social stratification draws on the work of scholars who preceded him (Brint & Karabel, 1989). In Labaree's (1997)

view, social mobility goals pursued through competitive educational systems and market-oriented program development are dominant in the present. His view provides a useful framework for explaining current changes in community college systems, where social efficiency and social mobility goals dominate the vision of democratic equality that was a major component of the founding rhetoric of the community college. In this respect, the social mobility goal is distinct from both the democratic and social efficiency goals in that it treats education as a private good, rather than as a public good. “From the social mobility perspective, the chance to gain advantage is the system’s most salient feature (Labaree 1997, p. 28).”

Here, more recent scholarship has connected with previous scholarship by highlighting how pervasive ideologies such as neoliberalism have moved the community college from access policies to outcome policies consistent with market forces. Scholarship by Levin (2001), as well as Slaughter and Rhoades (2004), points toward a movement of a neoliberal regime within higher education. Levin (2001) found that “Government policy in the 1990s clearly favored the interests of business, industry, and capital. The state’s attention to issues of equity, access, and an informed citizenry—issues that could be held up as critical to the community college movement—was marginal” (p. 112). Ayers (2005), similarly, found as a result of neoliberal hegemony an overt focus on development of human capital, therefore a focus on degree and certificates (e.g., outcomes) by policymakers to the detriment of access.

A second trend of the literature consistent with this historical thread is that “access is not enough” (Shulock & Moore, 2007, p. 4). Here scholars have concurred

tacitly with the tenets of the access agenda, yet have pushed for more focus on outcomes in the form of student achievement and attainment, or as Engstrom and Tinto (2008) contend, “Access without support is not opportunity” (p. 46). As a result, the outcomes literature in recent years has developed as a counterweight to literature that promotes access and, while not exclusively, rests comfortably in a critical perspective.

While policy makers have called for efficiency, productivity, and accountability, concern for the “democratic equality” mission of the community college has been particularly absent in the activities of policy makers and administrators (Levin 2001; Rhoads & Valadez 1996). As such, while the open access mission of the community college remains a lofty ideal, scholars have noted trends towards an erosion of access as well as that access initiatives prove ineffective in providing equality of educational opportunity (Dowd, 2003; Goldrick-Rab, 2010; Shaw & Goldrick-Rab, 2006). As a result, a third stream of scholarship has attempted to marry the access arguments with the outcome and efficiency arguments.

Historically, the community college’s “equity agenda” has consisted of three components: access, readiness, and success (Bailey & Morest, 2006, p. 1). Bailey and Morest (2006) argue that achievement and attainment (success) would be realized by a more diverse student population through the adoption of an equity agenda that deliberately links access to college readiness; community colleges would ostensibly endorse the notion that “a student’s income or race should not be a significant determinant of his or her educational achievements” (p. 2) if he or she is prepared to enter college ready to learn. Dowd (2003) articulates an accountability system consistent with

Bailey and Morest's (2006) equity agenda. According to Dowd (2003), this dynamic offers opportunity for community college leaders, civic activists, and academic researchers to engage in a political dialogue about the role of the community college. As a result, it is assumed that those who adhere to the community college's democratizing role must argue for the design of performance indicators that include a focus on that role. Dowd (2003) asserts that a persistent emphasis by equity advocates on access, in opposition to performance accountability, is a lost opportunity to focus public and legislative attention on unequal outcomes.

Access and equity

Missing in much of the literature is an answer as to who is included in open access policies. While instrumentalist Marxist critics (Dougherty, 1994) have argued the purpose of the community college—social reproduction (Brint & Karabel, 1989), cooling out (Clark, 1960), or dream diversion (Brint & Karabel, 1989)—they have rarely challenged the existence of access. Furthermore, functional advocates have treated the “open-access” mission as more than policy, elevating it to an article of faith. I contend that literature on this topic has failed to question adequately whether or not open-access exists.

One example is Perin (2006), who argues that along with the commitment to access, community colleges also purport to maintain high standards, a goal that is threatened by the presence of large numbers of low-skilled entrants. As such, Perin (2006) further argues that access goals can be achieved if with a high school diploma are admitted to postsecondary programs (Perin, 2006). Perin (2006) goes on to argue that a

simple definition of equity might suggest that each individual should have the same chance to participate, which is consistent with the community college's open-door policy (Perin, 2006). Yet, Perin (2006) puts a caveat on who is included in the all (applicants with a secondary education credential) and the qualification is similar to Bailey and Morest (2006) who include only those who are ready to learn at a college level.

This current investigation is predicated on the lack of access and educational opportunity of disabled students in higher education, particularly the community college (Raue & Lewis, 2011). However, in spite of this group's lack of access, equity, and opportunity, the literature has been silent on their opportunities (Peña, 2014). Indeed, functional advocates such as Cohen, Brawer, and Kisker (2013) when noting individuals with disabilities recommend their placement outside the mainstream college, dismissing them as associated with the incarcerated. Here is an example of a trend that exists in scholarship of qualifying access. By failing to recognize the highly nontraditional student (Levin, 2014), the scholarship on equity and access has failed to live up to its own dogmatic allegiance to the equity agenda.

In spite of literature that champions the access/equity agenda, recent policy decisions at the state-level demonstrate the erosion of access replaced by the rhetoric and intentions of "student success" (e.g., outcomes). One salient example of this is the California Community College Chancellor's Office change of policy wording following the passage of the 2012 Student Success Act. Until the passage of the Student Success Act, Section 55500 of Title 5 of the California Education Code stated: "The purpose of this subchapter is to further equality of educational opportunity and success for all

students in the California Community Colleges” (California Community College Chancellor’s Office, 2013). This statement’s inclusion of the phrase “all students” exemplified the open access mission of the California Community College. The presence of the word “all” is inclusive of students from differing racial, ethnic, and social-economic backgrounds. However, with the passage of the AB 1456 (Student Success Act of 2012), the statement of purpose has since been altered to read: “The purpose of this subchapter is to implement the Student Success and Support program to increase California community college student access and success through the provision of core matriculation services, including orientation, assessment and placement. . .” (California Community College Chancellor’s Office, 2013). The removal of the phrase “all students” can be interpreted as a weakening of the open access or equity agendas within the community college in favor of a completion agenda. This is only one example; however, this example exists within the largest community college system, in the most populous state, in the U. S. This policy supports the access defenders’ assertion that open-door policies must be defended. However, policy actions, consistent with the findings of Levin (2001, 2007) and Slaughter and Rhoads (2004), provide a tool for explaining how political ideologies (e.g., neoliberalism) have entrenched themselves within this debate, thus favoring student outcomes over access.

In the preceding, I have attempted to connect current trends in the literature within greater debates on both access and completion within the scholarship. However, I have also attempted to point to divergent views within recent scholarship that examine access as an object in need of preservation as well as an increased focus on access for particular

demographics. Moreover, while proponents of the democratic equality mission of the community college evoke a mythical golden age of access, in using disabled students as a placeholder, I contend that universal access has never existed fully within the community college, particularly for disabled students. In regards to the completion agenda, I have found a critical stream that points to many of the same structural issues identified by Bowles and Gintis in the 1970s (1976). Furthermore, I have argued that there is a trend within a literature that attempts to marry access and completion that qualifies or modifies the particular type of access (e.g., for students with a high school diploma). Finally, using California Education Code as an example (California Community College Chancellor's Office, 2013), I point to concrete evidence of a growing trend by policy makers toward a completion agenda, at the cost of access, regardless of the scholarship on the issue. It appears, then, as though policy makers and scholars have been covering the same ground for the greater part of four decades. However, scholars and policy makers may yet find solutions that unravel the competing claims that make community college missions contradictory (Dougherty, 1994).

The Historical Context of Access in California's Community Colleges

While there is some debate on the origin of U. S. community college (though many place the founding of the first public Junior College in Joliet, Illinois at the 19th century), California is recognized as the first to pass laws at the state level for the long-term development of the junior college (Tollefson, 2009). The first of these, known as the Caminetti Act, was passed in 1907 by the state legislature and authorized local high schools to provide college-level courses locally.

The board of trustees of any city, district, union, joint union or county high school may prescribe postgraduate courses of study for the graduates of such high school, or other high schools, which courses of study shall approximate the studies prescribed in the first two years of university courses. The board of trustees of any . . . high school wherein the postgraduate courses of study are taught may charge tuition for pupils without the boundaries of the district wherein the courses are taught (California State Department of Education, 1928, p. 7, as cited in Tollefson, 2009).

The act would never have an opportunity to be realized as it was vetoed once it reached the desk of the governor. However, the veto of the bill did not dissuade California's progression toward the junior college with eight cities founding junior colleges between 1912 and 1918. During this period, California would pass the Ballard Act in 1917 (Tollefson, 2009; Winters, 1964)). The Ballard Act provided state financial support as well as early regulations for junior colleges. It provided for state funding at the same per-student funding rate as specified in the formula for funding public schools. This resulted in rapid junior college growth (Tollefson, 2009). By 1928, the state had developed thirty-one junior colleges. Another twenty-six were added by the end of World War II in time to provide postsecondary education to returning soldiers through the GI Bill (Winters, 1964).

Following World War II, the GI Bill increased access opportunities throughout the country providing tuition and book assistance to veterans entering higher education. As a result, by 1960, there were 56 districts in California offering junior college courses.

That same year, California passed the *Donahoe Act* (State of California, 1960b), also known as California's *Master Plan for Higher Education* (State of California, 1960a; Douglass, 2007). The plan created a tiered system that set higher requirements for attendance at four-year colleges and universities, which limited enrollment at the University of California and the California State University schools. Junior colleges were left to accept all other applicants amid complaints that poor students were being shunted to community colleges (Douglass, 2007). However, a stated intention of the legislation was to allow the CCC to enable all eligible citizens to participate in some form of postsecondary education, thus promoting access for a larger citizenry than had previously been available (Douglass, 2007; Tollefson, 2009).

The California Department of Education would oversee the community college until 1967 when, influenced by studies that showed a lack of leadership and direction, Governor Reagan and the Legislature established a community college system with a Chancellor's Office and a Board of Governors (Douglass, 2007). At this time, junior colleges officially became community colleges. Over the period since the act and the plan, the mission of CCC has increased beyond access for academic and vocational education to include remedial instruction, ESL, adult non-credit, community services, and the advancement of "California's economic growth and global competitiveness through education, training, and services that contribute to continuous work force improvement" (California Department of Education 1997, Section 66010.4, paragraph 3).

Yet, funding cuts, beginning in 2008, and policies throughout the 2000s began to challenge the access ideals within California's *Master Plan for Higher Education*. These

funding cuts followed a period in the CCC (2000-2008) which bore witness to a deliberate movement away from the diversity and access missions toward one of completion and accountability. One example of this movement came in 2004 with California's passage of Assembly Bill 1417 (State of California 2004), which established the Accountability Reporting for the Community Colleges program that required the Board of Governors of the CCC to recommend a framework for the evaluation of performance in meeting efficiencies. These changes occurred at a time when research began to indicate that policies associated with open, or increased, access were preventing completion and attainment of educational credentials (Shulock & Moore, 2007).

These movements were consistent with an overarching trend in higher education referred to as neoliberalism (Levin, 2001, 2014). Neoliberalism, according to Olssen and Peters (2005) is an ideological position resulting in a campus environment in which the "traditional professional culture of open intellectual inquiry and debate has been replaced with an institutional stress on performativity" (p. 313). Despite this trend, the majority of community colleges maintained critical components of their mission, such as access to educational opportunities for adults, a community orientation, and a focus upon students as learners. These characteristics have over the decades since the 1960s provided the community college with a unique voice within postsecondary education institutions (Cohen et al., 2013; Meier, 2013). However, since the early 1990s, higher education policy and behaviors have placed greater emphasis on developing a globally competitive workforce while simultaneously stressing completion and efficiency. Furthermore,

Quiggan (2012) argues that an emphasis on neoliberal principles leads not only to competitions but also to inequality for students.

Since the early 1990s higher education, including CCC, has adopted neoliberal reforms replacing concepts of access and diversity with ideological preferences, such as educational and training attainment to meet workforce needs of the private sector (Olssen & Peters, 2005). A survey of community college mission statements highlights this movement away from open-access toward completion and efficiency in local community college missions (Ayers, 2005).

The budgetary issues in CCC beginning in 2007 provide evidence of the inequality Quiggan (2012) highlighted, particularly as a result of neoliberal principles as experienced by vulnerable (including disabled students) populations. From fiscal years 2007-2008 through 2011-2012, the CCC experienced over \$1.5 billion dollars in budget cuts (Zumeta & Frankle, 2007). As a result of these budgetary constraints, policy in CCC began to move away from supported access for vulnerable populations in order to focus on students deemed most able to complete in an increasingly competitive economic climate. Moreover, programs designed to support vulnerable populations (e.g., students with disabilities) saw dramatic cuts to their funding allocations. In many cases, the cuts experienced in the 2009-2010 fiscal year were as high as 40% over previous years (Contreras, 2013; Farr, 2010).

Market ideals and the subsequent ideology of neoliberalism with its emphasis on economic principles and individualism, argue Oliver and Barnes (2012; Oliver, 1990), have been responsible considerable marginalization, exclusion, and oppression of

disabled individuals since the dawn of the industrial revolution. As such, any trend toward neoliberalism in CCC policy and practices lays the groundwork for continued marginalization and exclusion of disabled students through constraints on access, and reinforces a pathological view of disability as individualized tragedy (Oliver & Barnes, 2012).

Barriers to Access

The literature on access in higher education suggests that scholars, generally, have approached higher education access through a deficit or trait lens, choosing to focus on a student's individual limitations as the reason for non-desired outcomes (Levin, 2014; Tierney & Hagedorn, 2002). Furthermore, models used to explain college choice (Hossler & Gallagher, 1987), or whether a student is "college qualified" (Berkner & Chavez, 1997), place the onus on the individual student without acknowledgement of policies, structures, or legislative forces on student opportunity. Three barriers to access have been identified repeatedly in the higher education scholarship: each require the student to overcome a deficit (Adelman, 2003; Bailey & Morest, 2006; Dowd, 2003; Goldrick-Rab, 2010; Perna, 2006; Rosenbaum, Deil-Amen, & Person, 2006; Shaw & Goldrick-Rab, 2006; Tierney & Hagedorn, 2002). First, students fail to access higher education due to the lack of academic preparation they have received in K-12 settings (Ellwood & Kane, 2000; Tierney & Hagedorn, 2002). Second, students fail to access higher education due to a lack of financial resources necessary to fund their college education. (Fitzgerald, 2004; Perna, 2006; St. John, 2003). Third, students fail to acquire the social and cultural capital

necessary for understanding the world of higher education (Rosenbaum, Deil-Amen, & Person, 2006; Tierney & Hagedorn, 2002).

While the above three barriers to access have been demonstrated repeatedly, they fail to capture the entirety of the scholarly landscape on access to higher education for disabled students. Higher education scholars have attempted to move the research into asking more nuanced questions regarding what students are, in fact, accessing (Dowd, 2003); however, scholarship on access and barriers for disabled students is found largely outside of the higher education literature.

Legislation such as the American with Disabilities Act (ADA, 1990) and subsequent amendments (ADAAA, 2008) were constructed as an attempt to remove barriers to opportunities in education, among other capabilities, by premising the policies on core principles of equal opportunity and full inclusion (Marshak, Wieren, Ferrell, Swiss, & Dugan, 2010; Silverstein, 2000). Disability activists have “pressed forward a broad concept of equal access that has sought to guarantee full participation in society” (Longmore, 2009, p. 144). This idea of full participation in a social arrangement is a unique contribution by the disability rights movement to civil rights theory in so far as it moves the conversation from mere entrance to one of participation (Longmore, 2009). Furthermore, access as viewed in disability studies literature is a way of perceiving, understanding, and orienting to social spaces within an institutional environment (Titchkosky, 2011, p .3). As such, access is to be understood as more than a single act of inclusion or participation, but rather as comprehensive and ongoing (Titchkosky, 2011).

In order to distinguish the disability activists' definition of access as participation with the generally accepted definition centered on enrollment or entrance, disability-related literature often makes a distinction between the terms "access" and "accessible." "Access" is generally referred to in ways synonymous with the above interpretations in use within higher education scholarship. However, "accessible" is more nuanced and generally used within disability legislation and scholarship to put forth a more complex view of "access." According to the U. S. Office of Civil Rights: "Accessible means that individuals with disabilities are able to independently acquire the same information, engage in the same interactions, and enjoy the same services within the same timeframe as individuals without disabilities, with substantially equivalent ease of use" (OCR Reference No. 10122118). The above definition moves the discussion on access beyond mere enrollment to a discussion on participation and opportunity to be educated. As such, any discussion on barriers to access or opportunity will include issues related to experiences within institutions as well as experiences in enrollment to the same.

Despite legislation designed to redress barriers to access and accessibility, scholarship demonstrates that multiple barriers into postsecondary institutions, as well as within postsecondary institutions, continue to exist. Literature on specific disabilities offers a more nuanced explanation; however, this serves only to perpetuate a focus on individual differences, impairments, and deficits. In contrast, my review of disability related literature takes a broader, aerial view of the scholarly landscape.

Disability scholarship has traditionally identified two separate categories of barriers to access/accessibility for individuals with disabilities, attitudinal and

institutional. Indeed, legislative analysts who conduct research in preparation for the drafting of the Americans with Disabilities Act (1990) found that both attitudinal and institutional barriers exist and act as marginalizing forces.

[S]ociety has historically imposed attitudinal and institutional barriers that subject persons with disabilities to lives of unjust dependency, segregation, isolation, and exclusion. Attitudinal barriers are characterized by beliefs and sentiments held by nondisabled persons about persons with disabilities. Institutional barriers include policies, practices, and procedures adopted by entities such as employers, businesses, and public agencies (Silverstein, 2000, p. 1695).

However, I contend that institutional barriers can be broken down further into four distinct components. As such, I have identified five barriers, including the four institutional barriers and attitudinal barriers, to access for disabled students.

These barriers were identified through a review of articles published in *The Journal of Postsecondary Education and Disability (JPED)* [the scholarly journal of the Association of Higher Education and Disability (AHEAD)] between the years 1991 and 2012. The five identified barriers to access in disability studies literature (attitudinal barriers, geographical barriers, architectural barriers, procedural barriers, and curricular barriers) are supported by critical approaches to disability within scholarship (Barnes, 2007; Oliver & Barnes, 2012; Tremain, 2006). This literature review also highlights the overwhelming focus on 1) ameliorating (via accommodation) functional limitations; 2) student experiences with their own impairments; and, 3) professional best practices.

Attitudinal barriers are present when disabled students encounter “ableist” attitudes from faculty, staff, and fellow students. Furthermore, when faculty and staff lack awareness and knowledge concerning students with disabilities and their needs, students encounter further barriers to college access (Barnes, 2007; Oliver & Barnes, 2012). Procedural barriers exist in the policies and practices that prevent a student from the full experience of opportunity, such as the need for disabled students to self-identify that they have a disability and provide appropriate documentation in order to receive accommodations (Cook, Gerber & Murphy, 2000; Duggan, 2010). Geographical barriers can be actual physical placement of an individual within a classroom or on campus, but can also include the location of disability serving programs on a campus. Furthermore, geographical barriers can include where educational resources are located in relation to an individual’s place of residence as well as the means they have in which to cover that distance (Duggan, 2010; Pierangelo & Giuliana, 2008).

Architectural barriers present obstacles not only in the form of ramps and doorways but also in the manner in which desks are situated in a computer lab (Duggan, 2010). Another aspect of the built environment is related to technology, in so far that technology creates an electronically or virtually built environment just as integral to access as the physically constructed environment of the campus (Dietrich, 2014). Policies can then be evaluated against principles of universal design within the built environment as first identified by architect Ron Mace in the 1950s (Center for an Accessible Society, 2014).

Finally, curricular (or academic) barriers tend to receive the most attention in higher education literature. Curricular barriers result from both an inability and unwillingness of faculty to practice principles of universal design in learning, thus negating the need for institutions to provide accommodations and services that can be both stigmatizing as well as financially burdensome to the institution (Burgstahler, 2014; Dietrich 2014). According to the National Center for Universal Design in Learning (UDL), a universally designed instructional environment provides for multiple means of representation (providing diverse learning options), multiple means of expression (providing various options for learners to demonstrate what they know), and multiple means of engagement (provide different ways in which to connect with learners' interests) [CAST, 2014]. These include the need for alternate mediums of information (i.e., textbooks into braille or MP3, computer interface via speech or eye-gaze, lecture via captioning, or sign language interpretation), testing accommodations (e.g., extended test time), and note-taking services or other academic supports required for a student to access curricula on campus (Burgstahler, 2014; Dietrich, 2014).

Conclusion

Each of the above barriers affects students in different ways including those that create barriers prior to enrollment as well as those that affect students after enrollment. However, taken in total, each acts on a student's opportunity to be educated. Therefore, each barrier contributes to my explanation of how state and college-level policies contribute to and shape the opportunities for disabled students. However, these opportunities or barriers, depending on the participants' respective position are

constrained by legislative and political structures that both constrain and create opportunities for disabled students. Therefore, in order to explain the specific institutional policy implications for CCC in regards to access (or barriers) for disabled students, I next explain the national context in which disability law, as well as the subsequent interpretations of those laws, currently operates.

Disability and Higher Education

On top of the various missions that community colleges fulfill, CCC must also fulfill federal mandates in regards to disabled students. Postsecondary institutions, including CCC, under Title II of the ADA (ADAAA, 2008) must ensure legally that the programs they offer, including extracurricular activities and avenues of communication, are accessible to students with disabilities. State colleges and universities must ensure “program access” (ADAA, 2008) under Title II, while private colleges must ensure readily achievable barrier removal under Title III (ADAA, 2008). Under both titles of the ADA, such access is to be supported through the provision of “reasonable modifications” to policies, practices, and procedures and “auxiliary aids and services” (ADAA, 2008).

Academic adjustments may include classroom and testing modifications, such as extra time on examinations, provision of materials in alternate formats, and ensuring physical accessibility of classrooms and labs. Auxiliary aids and services include practices that create access to information for people with sensory impairments, such as providing sign language interpreters for students who are deaf and readers for students who are blind (Jacob & Hartshorne, 2008).

These ideals, embodied in various iterations of ADA (1990, 2008), were first developed and exemplified in section 504 of the Vocational Rehabilitation Act of 1973. Section 504 states, “no otherwise qualified handicapped individual in the United States shall solely on the basis of his handicap, be excluded from the participation, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.” Essentially, the act states that no program receiving federal funds may discriminate against a person with a disability. Institutions of Higher Education that received federal funds by way of direct grants or via students in the form of federal financial aid were now to be held accountable for the manner in which access was denied or granted to individuals with disabilities.

This idea was reaffirmed in 1987 when the Supreme Court reflected back on the rationale and purpose of Section 504. In *School Board of Nassau County v. Arline* (1987), the United States Supreme Court recognized that the purpose of Section 504 of the Vocational Rehabilitation Act was to provide handicapped Americans with opportunities, including, but not limited to, an education.

Congress not only increased federal support for vocational rehabilitation, but also addressed the broader problem of discrimination against the handicapped by including Section 504, an anti-discrimination provision patterned after Title VI of the Civil Rights Act of 1964 (*School Board of Nassau County v. Arline* 107 S. Ct. 1123, 1987).

Section 504 also articulated a definition of disability that remained the template for said definitions in future legislation. Section 504 defines a person with a disability as one

who has a physical or mental impairment that substantially limits one or more major life activities such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, or working (Jacob & Hartshorne, 2003; Zirkel, 2009). This definition has been refined further in other pieces of legislation (chiefly ADA 1990 & ADAA 2008), but not altered significantly.

History of Section 504 and ADA

An explanation of the implications of a law such as Section 504 requires background knowledge of laws surrounding the Section 504 legislation. The origins of Section 504 of the Rehabilitation Act of 1973 can be traced back to World War I. Interest in the rehabilitation needs of the disabled first came to the attention of Congress at that time. Proposals were raised in Congress to rehabilitate soldiers who were disabled as a result of injuries sustained during World War I. The first legislation to address the needs of disabled war veterans and industrially disabled civilians was enacted in 1920. Additional programs were enacted in 1943, 1954, 1965, 1967, and 1968 that would later become part of Federal Social Security (OCDE, 2003; See also, 1973 U. S. Code Cong. & Admin. News, p. 2082)

Reports generated by Congress estimated that, since the inception of the Federal-State Program of Vocational Rehabilitation in 1920, over three million individuals with disabilities had benefitted as a result of the legislation. However, witnesses before Congress continued to argue that the legislation was not enacted well or widely enough to reach the individuals most in need (OCDE, 2003; Wilhelm, 2003). This point was highlighted within the legislative history of the Rehabilitation Act of 1973.

The key to the intent of the Bill is the Committee's belief that the basic vocational rehabilitation program must not only continue to serve more individuals, but place more emphasis on rehabilitating individuals with more severe handicaps. (U. S. Code Cong. News, pp. 2092, cited in OCDE, 2003)

Furthermore, while progress was made in rehabilitation related policy and legislation, there were strides toward the formation of what is now known as "Special Education" (OCDE, 2003). In 1965, the *Elementary and Secondary Education Act*, which was designed to help disadvantaged students attain higher levels of proficiency in school, was passed thus furthering the role of the federal government on behalf of students with disabilities.

Between 1965 and the passage of the Rehabilitation Act of 1973, Congress began to move further toward legislation targeted at non-discrimination for various marginalized groups. This movement (for lack of a better term) toward inclusion found its completion within the passage of section 504. Legislatively, the movement found a champion in Sen. Hubert Humphrey, who had attempted in earlier years to pass civil rights legislation covering people with disabilities, Humphrey noted in reference to Section 504 "the time has come to firmly establish the right of disabled Americans to dignity and self-respect as equal and contributing members of society and to end the virtual isolation of millions of children and adults" (as quoted in Cone, 1997, paragraph 4). As a result of the passage, exclusion from, denial of benefits, or discrimination in any federally funded program were prohibited by Section 504. Thus, Congress acted and

passed Section 504 of the Vocational Rehabilitation Act which laid a foundation for future disability related Civil Liberty legislation (Cone, 1997).

Following passage of section 504, the disability community mobilized a campaign using a variety of strategies, and on May 4, 1977 the Section 504 regulations were issued by the Carter administration (Cone, 1997). It is these regulations which form the basis of the ADA. In the early 1980s the disability community was called upon to defend the hard-fought-for Section 504 regulations from attack. After taking office, President Reagan established the Task Force on Regulatory Relief under the leadership of then Vice President George Bush. The mission of the Task Force was to “de-regulate” regulations which were burdensome on businesses. The Section 504 regulations were chosen for “de-regulation.” This sent a current throughout the disability movement across the country, which quickly mobilized a multi-tier strategy to preserve the regulations (Mayerson, 1992).

Individual with a Disability

A central tenet of both Section 504 of the Vocational Rehabilitation Act of 1973 as well as Title II of ADA (2008) is the definition of “individual with a disability.” The manner in which institutions of higher education go about interpreting this phrase, as well as making policy in accordance with this interpretation, carries significant implications for both the institution as well as the individual so-defined. Within the context of section 504, Congress defined “handicapped individual” to read as follows: “Any person who (i) has a physical or mental impairment which substantially limits one or more of such person’s major life activities, (ii) has a record of such an impairment, or (iii) is regarded

as having such an impairment” [29 U. S.C. section 706(8)(B)]. The definition of “handicapped individual” in section 504 included a broad range of individuals previously not considered handicapped, or disabled. For example, case law holds that alcoholics, in general, are “handicapped individuals ” within the meaning of Section 504.(Sullivan v. City of Pittsburgh, 811 F.2d 171, 182 (3rd Cir. 1987) [holding that City’s attempted closure of an alcohol treatment center may have violated Section 504].

Title II of ADA (2008) maintains this definition, as articulated in section 504, yet removes the word handicapped and replaces it with the term disabled. Furthermore, the ADA 2008 broadened the scope of definitions as opposed to previous iterations in 1973 or 1990. The definition of disability and individual with a disability is fundamentally related to much of the services provided by institutions of higher education. In short, Section 504 and Title II of ADA 2008 defines a person with a disability as one who has a physical or mental impairment that substantially limits one or more major life activities such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, or working (Jacob & Hartshorne, 2003; Zirkel, 2009).

One of the first ways in which an institution of higher education can apply a particular interpretation deals with the admissions and recruiting process. Under Section 504 and Title II of ADA, the admissions or recruiting process at educational institutions that receive federal funding cannot discriminate against individuals with disabilities (Kaplin & Lee, 2007). This means that postsecondary institutions cannot inquire about disability before admission, impose a limit on the number or proportion of students with

disabilities, or use any criteria for admission that would have a “disproportionate, adverse effect” on the admission of students with disabilities, unless the criteria have been shown to predict academic success and non-discriminatory alternative criteria do not exist (Kaplin & Lee, 2007, p. 329). Therefore, postsecondary institutions cannot inquire if students have a disability, use a quota system to limit the number of students with disabilities on campus, or use admissions criteria that would affect the admission of students with disabilities disproportionately.

Once a student is admitted to the institution, the next step in the process is the act of verifying eligibility for services (or “reasonable accommodations”). Within the postsecondary setting, a student must self-disclose their disability to the institution if they want to receive accommodations under Section 504 or Title II. In order to qualify for such accommodations, the student must demonstrate that they have a physical or mental impairment that substantially limits a major life activity (Jacob & Hartshorne, 2003; Zirkel, 2009). Mental impairments may include mental retardation, emotional or mental illnesses, or learning disabilities such as ADHD (Wilhelm, 2003).

According to ADAA 2008, learning may qualify as a major life activity that may be limited substantially by the physical or mental health impairment (Jacob & Hartshorne, 2003). Furthermore, ADAA included limitations in concentrating, reading, and thinking as examples of major life activities that would make one eligible for Section 504 protections (Zirkel, 2009). In regard to the severity of the limitation, the United States Equal Employment Opportunity Commission (EEOC) has defined “substantially limited” as either being unable to perform a major life activity that an average non-

disabled person can perform or not being able to perform such an activity in a comparable condition, manner, or duration as an average non-disabled person (Wilhelm, 2003). This limitation is to be evaluated without consideration of the mitigating measures such as medication (Shaw, Keenan, Madaus, & Banerjee, 2010). Finally, the student must be considered to be “otherwise qualified” to participate in the program in question. This means that the individual must be able to meet the program requirements with reasonable accommodations (Denbo, 2003; Wilhelm, 2003). If the student is not able to meet the program requirements despite the use of reasonable accommodations, he or she is not considered to be “otherwise qualified” under ADA (Wilhelm, 2003).

The practice of verifying that a student has a qualifying disability varies from institution to institution. The National Center for Education Statistics (2011) reports that during the 2008-2009 academic year, 92% of institutions in the United States required some form of verification. Of those institutions, 80% accepted a comprehensive vocational rehabilitation agency evaluation as adequate verification. 44% of the institutions accepted an Individualized Education Program (IEP), and 40% of the institutions accepted a Section 504 plan from a secondary school. When aggregated by type of institution, 99% of community colleges and 98% of public four-year universities required verification of a disability. In the private sector, 87% of private not-for-profit four-year universities and 100% of private for-profit universities required verification.

Reasonable Accommodations

Once a student is admitted and has established that they are disabled and qualified, educational institutions have the legal burden to explore accommodations

(Thomas, 2000). The courts have outlined several guidelines that postsecondary educational institutions must follow. First, although the student with a disability must bear the initial cost of testing, the institution must bear the cost of providing reasonable accommodations (Rose, 2013). Decisions regarding reasonable accommodations must be made by qualified individuals who have training in the field (*Guckenberger v. Boston University II*, 1997).

Academic institutions must engage with students in an “interactive” process to clarify individual needs and identify the appropriate accommodations (*Guckenberger v. Boston University II*, 1997). As part of this interactive process, the institution must explore all viable options for accommodation; “mere speculation that a suggested accommodation is not feasible falls short of the reasonable accommodation requirement” (*Wong v. Regents of University of California*, 1999, p. 818).

Furthermore, arbitrary accommodations are not suitable; the institution must consider the needs of the specific individual (*Duval v. County of Kitsap*, 2001). The institution must provide accommodations in a timely manner (*Button v. Community College System of Nevada*, 2008). Interpreters and note takers must be qualified individuals who deliver service in a consistent manner (*Button v. Community College System of Nevada*, 2008). When considering changes to accommodations policies, a university cannot impose “documentation criteria that unnecessarily screen out or tend to screen out the truly disabled” (p. 135). Nor can new accommodations policies be “implemented without any advance warning to eligible students, in such a way as to have the effect of delaying or denying reasonable accommodations” (*Guckenberger v. Boston*

University II, 1997, p. 115). Finally, the institution must have a clearly articulated “. . . specific process for students to follow if their request for accommodations is denied” (*Guckenberger v. Boston University II*, 1997, p. 124). Many of these legal mandates are reflected in best practice standards for the Office of Disability Services (Rose, 2013).

Based on memoranda by the Department of Education, accommodations provided by Section 504 may include, but are not limited to, a structured learning environment, repeating or simplifying instructions and assignments, supplementing instruction, behavior management, adjustable class schedules, and use of note takers (Jacob & Hartshorne, 2003). While the courts have promoted positive interpretations of “reasonable accommodations,” they have established boundaries for which “reasonable” should not trespass. While a free and appropriate public education (e.g. FAPE) is part of IDEA (1990, 1997, 2004), it has not been construed as a reasonable accommodation within institutions of higher education. The court has asserted that affirmative action programs are not reasonable (*Davis v. Southwestern Community College*, 1979; *Smith v. Robinson*, 1984). These Supreme Court rulings clearly indicate that Section 504 creates no substantive rights to a free appropriate public education in addition to those contained in the IDEA. However, Section 504 does require school districts to accommodate disabled employees, students, and parents reasonably so that they may receive the benefits of the school district’s educational programs. Reasonable accommodation does not require major or substantial modifications to a school district’s program or other changes which are unduly burdensome (Rose, 2013).

Despite the ruling in *Davis* (1979) that major modifications to programs and expectations were not reasonable, the court did stipulate that the refusal to accommodate the needs of a disabled person might constitute discrimination and that identification of those instances where accommodation is required is an important responsibility of HEW (now the U. S. Department of Education and U. S. Department of Health and Human Services). Subsequently, various federal agencies promulgated regulations that defined reasonable accommodation. The regulations adopted by the U. S. Department of Education, Office for Civil Rights, define reasonable accommodation as including the modification of work schedules, job restructuring (including the shifting of nonessential duties), and physical modification of offices to provide access to the disabled if such accommodations would not cause undue hardship to the employer (OCDE, 2003; Rose, 2013).

The Court's ruling in *Davis* (1979) was echoed in *Brookhart v. Illinois State Board of Education* (1983), stating again that an institution of higher education was not required to lower its graduation standards in order to accommodate an individual with a disability. The Court of Appeals held that had the State of Illinois given disabled students sufficient notice of the test requirements, the graduation requirement would not have violated Section 504 (*Brookhart v. Illinois State Board of Education, 1983*). In *Wynne v. Tufts University School of Medicine* (1992), the Court of Appeals discussed the extent to which schools and universities must modify their testing procedures to accommodate individual with a disability. The plaintiff alleged that he was learning disabled and that his disability placed him at an unfair disadvantage in taking written multiple-choice

examinations. The Court of Appeals found that Tufts University considered alternate means of testing and came to a rationally justifiable conclusion regarding the adverse effects of the plaintiff's proposed accommodation. The Court of Appeals concluded that Tufts University had met its burden of proof and granted summary judgment in favor of Tufts (Rose, 2013). A similar conclusion was reached by the district court in *McGregor v. Louisiana State University Board of Supervisors* (1993).

In *McGregor* (1993), a law student with orthopedic and neurological disabilities sought changes in the testing procedures of the law school. The record showed that the law school allowed the student to stay enrolled even though his grades were below the required minimum and allowed him to take tests at home the first year. The student's classes were moved to more accessible locations and he was given considerable tutorial assistance from faculty. The following year, the student was not allowed to take his exams at home, but was given a choice of locations and extra time. Later, he was not allowed to proceed to the third year of law school because his grades were below the minimum required. The court held that educational institutions have the right to decide the basic structure and requirements of their programs (*McGregor*, 1993).

In *Bird v. Lewis and Clark College* (2002), the Court of Appeals affirmed the dismissal of an action brought by a college student under the Americans With Disabilities Act (ADA) and Section 504 of the Rehabilitation Act (Section 504), in which the student alleged that the college failed to provide wheelchair access to the student in various outdoor programs. The ruling in the *Bird* case is applicable to outdoor programs operated by school districts and community college districts. The Court stated that under Section

504, the college was required to provide Bird with meaningful access to its programs, but not required to make fundamental or substantial modifications to its program.

Reasonableness depends on the circumstances of each case and requires a specific and individualized analysis of the disabled individual's circumstances and the accommodations that might allow the person to meet the program's standards (Rose, 2013). The holding in Bird clearly reinforced previous rulings that not every aspect of the program must be accessible, and that districts are not required to modify or lower the standards of the program to accommodate students who are disabled.

Conclusion

Federal statutes (ADA, 1990; ADAAA, 2008) provide overarching mandates that govern the responsibilities of postsecondary institutions, including the CCC. However, as evidenced by the above, federal law is often interpreted widely by both the postsecondary institution and the Federal Courts. As such, while the federal laws provide a framework in which local policies are structured and interpreted, they do not explain fully local (state, institutional) interpretations of larger national statutes. Therefore, a review of scholarship on local policy development, as well as the factors (e.g., ideology) that shape local interpretations, is a necessary component of this review and investigation.

Policy Development and Problem Definition

One stated purpose of this investigation is to provide a framework for the evaluation of social policy. This allows me to examine and explain the space created within particular policies for individuals to achieve essential freedom, in the form of

access and opportunity (Terzi, 2005). Therefore, the analysis of the previous stated barriers in relation to the policies and structures to which they are connected allows me to explain said policies consistent with a social justice framework. In addition to concepts of access and opportunities, this investigation deals directly with disability and accounts for disability within a review of policy literature. As such, Oliver (1990) contends that “politicians, planners and programmers” (p. 94) shape the concept of disability through practices and policies at varying levels. As a result, disability rights activists argue that, “the immediate cause of marginalization [for disabled individuals] ha[s] been public policies” (Longmore, 2009, p. 145). Therefore, explaining the policy process and its relation to ideological assumptions, specifically as they relate to conceptual views of disability, provide a richer description of the interplay of disability, justice, and local policy.

The policy process as it pertains to public policies (local, state, or federal) is typically described as consisting of separate stages, each working in sequential fashion to form a process cycle. While scholars have often criticized the stages model as overly “positivistic” and “technocratic” (Torgenson, 1985, p. 34), the policy process model developed by Laswell (1951) has provided the foundation for policy study over the last half-century (Kraft & Furlong, 2008). These stages in the policy cycle include Agenda Setting [also referred to as Problem Identification or Problem Definition (Rocheffort & Cobb, 1994)], Policy Formulation, Policy Legitimation, Policy Implementation, Policy Evaluation, and Policy Change (Anderson, 2006; Birkland, 2011; Kraft & Furlong, 2008). The typical understanding of the policy process then suggests that after the

problem has been defined (within Agenda Setting) one or more policies are created to address the problem. Solutions can follow the definition of the problem or they can also be preexisting, waiting for an opportunity to be utilized (Birkland 2011; Kingdon 2003; Kraft & Furlong, 2008).

If policy can be defined as a “purposive course of action that an individual or group consistently follows in dealing with a problem” (Anderson, 2006 as quoted in Kraft & Furlong, 2008, p. 6), then an investigator’s ability to identify the problem from which the actions follow is paramount in order to explain Public Policy at any stage. Therefore, while each stage within the cycle has received its share of scholarship, analysis, and critique, I am primarily concerned with problem definition within the larger concept of Agenda Setting.

The definition of policy problems, also referred to as “problem definition,” is a well-established facet of the policy process. Bardach (1996) argues that problem definition has long been instituted as the most crucial and demanding task facing the policy analyst. In spite of the force of this assertion, there is little within the public policy literature that argues against this. However, within the literature there is little development of the concept of problem definition that moves the concept from a mere stage to more reasoned and nuanced concept (Rocheffort & Cobb, 1994). As such, I argue that the concept of “problem definition,” as housed within the Agenda Setting Stage, is itself poorly defined, and fails to represent real-world conditions and processes that incorporate ideological constructs as well as power dynamics. Therefore, I offer an expanded understanding of problem definition. After a careful review of the current

scholarship related to both problem definition and agenda setting literature, I offer an alternate view of the problem definition through an identification of three separate concepts. These concepts I label as: 1) issue identification, 2) rhetorical definition, and 3) revealed definition. By identifying the above three concepts, I am able to present an alternate version of problem definition that includes the aforementioned ideological constructs and elements of power within the policy process.

Problem definition is widely regarded as the first stage of the policy cycle, a stage that lays fundamental groundwork for the ensuing struggle over the construction of useful policy alternatives, authoritative adoption of a policy choice, implementation, and assessment (Brewer & deLeon 1983). Definition in this sense is not merely a label for a set of facts and perceptions. It is a package of ideas that includes, at least implicitly, an account of the causes and consequences of some circumstances that are identified as needing to be rectified, and a theory about how a problem may be alleviated (Dery 1984). As such, problem definition is especially important in public service arenas such as education, where a large constituency is dependent upon the services and supports of various caregivers, social workers, educators, and administrators.

One important facet of problem definition is that problem definitions answer different questions concerning “the decision to be made, the ends to be achieved, the means which may be chosen” (Schon, 1983, p. 40). Problem definitions also serve as a tool for political actors who seek to promote, or sell, the definition each individual favors and to influence the definition which will eventually emerge from the political process (Dery, 1984). Thus Stone (1988) understands problem definition in the political context

as “the strategic representation of situations,” representations that are “constructed to win the most people to one’s side and the most leverage over one’s opponents” (p. 106).

According to Reich (1988), “the most important aspect of political discourse is not the appraisal of alternative solutions to our problems, but the definition of the problems themselves” (p. 5). Reich’s (1988) argument is in keeping with Anderson’s (2006) assertion that definition sets the stage for policy to follow and therefore is fundamental to the entire policy process, rather than a facet within a single stage in a modeled policy cycle.

Agenda Setting

It does not necessarily follow that once a problem exists that policymakers will recognize the problem and place it in the queue for debate, decision-making, and action. Therefore, local problems [issues] are not necessarily “problems” in the policy arena; neither for that matter are “problems” which academics identify as “researchable.” Local constituents might see myriad problems in the local community, or even at the state and federal level. However, until a policymaker places the item into formal discussion it is not a problem in the policy sense (Weis, 1989).

Most policy scholarship has connected agenda setting and problem definition to the point of making them synonymous (Birkland, 2011; Kraft & Furlong, 2008). In fact, Rochefort and Cobb (1994) integrate Agenda Setting and Problem Definition by stating that problem definition “has to do with what we choose to identify as public issues and how we think and talk about these concerns” (p. vii). However, Dery (2000) argues that the two, while related, are fundamentally distinct; thus a distinction is created between

identification of an issue for the agenda and identification of problems in need of resolution. Weiss (1989) also draws a clear distinction between the two arguing, “[p]roblem definition is related to, but different from, agenda setting. Problem definition is concerned with the organization of a set of facts, beliefs, and perceptions—how people think about circumstances. Agenda setting refers to the process by which some problems come to public attention at given times and places” (p. 118). In other words, agenda setting is the identification and acknowledgement of issues without the full development of problem definition. This is a useful distinction, in that those who are capable of placing items on a political agenda can either be those same entities tasked with problem definition, or those outside of the policymaking structure (Dery, 2000). Where, then, do issues come from? How, as Weiss (1989) asserts, do individual, or local, problems rise to the attention of policy makers? The research indicates two broad areas wherein issues arise to the level of policymakers’ agenda. These include mandates (either from above or from populist pressure) and political entrepreneurs and/or innovators (Dery, 2000).

Mandates can be transmitted from the federal level to the state level, the state level to the local level, and the institutional level to the departmental or program level. However, mandates can also arise from the general public who have attached themselves to an issue. Regardless of origin, these mandates initiate a policy crisis (Fairclough & Fairclough, 2012) that must be resolved. In a general sense, a mandate places strong pressures on the government “to do something about what is generally perceived to be an urgent social problem” (Bardach 1980, p. 90). Mandates assume “that the required action is something all individuals and agencies should be expected to do, regardless of their

differing capacities, and that the required actions would not occur, or would not occur with frequency or consistency specified by the policy, in the absence of explicit prescription” (McDonnell & Elmore, 1991, p. 168). Mandates can also tend to create “an adversarial relationship between the enforcer and the object” (Elmore, 1987, p.177). However, this is often more of an issue in implementation rather than definition or agenda setting.

Another area of agenda development, or issue identification, is developed from the policymakers themselves. These policy innovators follow what Majone (1989, p. 148) refers to as adhering to a “technocratic” model. The technocratic model explains policy change as the result of policymakers changing their preferences and adapting their goals to new conditions. Learning is a fundamental facet of the policy process (or cycle), in which policy evaluation follows implementation and precedes correction and termination (Anderson, 1976; Brewer & DeLeon, 1983). Policy innovations are the product of evolutionary policy making where policies are seen as hypotheses, or theories, and implementation as the actual testing of policy theories (Dery, 1984). The technocratic model recognizes that non-incremental and discontinuous policies are, from time to time, adopted, but these are the exception rather than the rule, and are better treated by the political model.

The political model seeks to explain policy development as the result of changes in the configuration of dominant interests and pursues two main lines of inquiry. One employs the notion of political innovation (Polsby, 1984) while the other seeks to provide answers by focusing on agenda setting (Cobb & Elder, 1983; Kingdon, 1984). Implicit

within the technocratic approach to agenda setting is that this approach is a product of the marriage between power and (otherwise “sterile”) ideas (Dery, 1984). Moreover, Polsby (1984) has shown how the routines of politics (e.g., the yearly budgetary process, or holding elections for public office) can account for the rise of new policy ideas or placement of particular policies on an agenda. Presumably, people seek political office so as to introduce new ideas and innovative solutions, and, if elected, they can use the power of their office to influence public policy (Polsby, 1984).

Nonetheless, once an issue has gained agenda status merely indicates that there might exist an opportunity for directive action on that given issue (Kingdon, 1984); however, it does not disclose how that issue is likely to be handled or by which existing programs and procedures (Dery, 2000). Furthermore, issues must be seen as problems that are worth solving and able to be solved within the policymakers’ purview (Wildavsky, 1979). Therefore, issues must be deemed feasible and worthwhile (Dery, 2000). Thus, the political process may respond in one way when it determines whether or not an expressed public concern (e.g., sharp increase in rent prices) is an issue that deserves government attention, and quite another when it determines how the same issue will be conceptualized and how subsequent action, or inaction, may be legitimized (Dery, 2000).

Problem as Social Construct

In policy analysis, problems are analytical constructs; in politics, they are political constructs (Dery, 2000; Rochefort & Cobb, 1994). Hajer (1993) argues that whether or not a situation is perceived as a political problem depends on the narrative in which it is

discussed. In policy analysis the construct or definition proposed by an analyst is one of many inputs to a political process. In politics, what is recognized, or legitimized, as the appropriate definition of a given problem is the product of the political process. This is the case, whether problem definition is an input to a political process or its product (Dery, 1984). If so, then the selection, by policy makers, of issues for active consideration, which is the essence of agenda setting, must be differentiated clearly from the political process of problem definition (Dery, 2000). “Completion rates,” “access,” “faculty rights,” and “employability” are examples of answers to the question: “Which issues are on the agenda in California’s Community College Chancellor’s Office?” Yet, according to Dery (2000), such answers do not reveal the slightest hint to how these issues might be defined.

In order to explain the nature of problems as socially constructed phenomena, it is first necessary to recognize that problems are not objective realities in their own rights, but rather analytical and theoretical constructs (Dery, 1984, 2000; Rochefort & Cobb, 1994; Weick, 1995; Weis, 1989). That is not to say that issues cannot be objective realities, but whether or not the local issues rise to the level of agenda and policy problem depends on individual perspectives (Rochefort & Cobb, 1994). Stone (2002) argues that problem definition is dynamic and premised on individual biases, agendas, and experiences (e.g., socially and politically constructed), and must therefore be deliberated upon or argued (Fairclough & Fairclough, 2012).

This process of argumentation and the language in use serve to shape the issues themselves in addition to furthering a particular point of view (Juma & Clarke, 1995).

Hajer (1993) argues that contrary to a positivist approach to policy problems where language is a neutral carrier of information, language, particularly how it relates to agenda setting, is now “recognized as a medium, a system of signification through which actors not simply describe but create the world” (p. 44). This furthers the notion that issues, problems, agenda, and any ancillary aspects of problems definition and agenda setting are constructed by the actors and environment and do not exist as objective realities.

Issue Identification

Consistent with arguments put forward by Dery (2000) and Weis (1989), I contend that issue identification (e.g., agenda setting) is an activity distinct from problem definition as defined in the preponderance of the literature. Furthermore, consistent with Rochefort and Cobb (1994), I contend that both the manner in which issues rise to the policymaking agenda, as well as the nature of defined problems, is socially constructed, and this socially constructed reality has implications for future aspects of the policy process. Moreover, I assert that the language of problem definition is a political exercise that has little substance divorced from directed action. Finally, in keeping with Rochefort and Cobb’s (1994) explanation of problem definition, I contend that problem definition is an issue of policymakers determining causality rather than defining any given issue as a problem. Coupled with this, I argue that both issue identification as well as causal determination are influenced by ideology to such a degree that deliberation on possible courses of action are narrowed to a predetermined set of possible outcomes. In the following, I will expand further on the above by highlighting concepts of issue

identification, rhetorical definition, and revealed problem along with examples from within the California Community College system.

Building from Weiss' (1989) definition of agenda setting as the process "by which some problems come to public attention at given times and places" (p. 118), I contend that issue identification is similar to, although distinct from, what is typically labeled as agenda setting within the literature. I argue that issues are constructed problems existing throughout all levels of society at all times. In community colleges, these may include the ever present problems with the gap of income in contrast to expected expenditures, pedagogical development and rigor, contingent faculty ratios, influence of accreditation bodies, opportunities for student access, measurements of student success, and completion rates. These are issues, and even problems, from particular points of view. However, other viewpoints might not categorize these as problems. Therefore, the arguments about these issues occur prior to the issues arrival on the policymaking agenda. While Stone (2002), Dery (2000), and others have argued that policy makers continue to argue over problem definition, I contend that prior to the actions of the policymakers argumentation over problem definition has taken place. Within the context of the community college, it is once constituent groups (students, community members, business interests, and faculty) exert pressure on policymakers (state legislature, federal legislature, and local institutions), or when mandates are disseminated from the top down (federal to state, state to institution, and institution to program/department/college), or when policymakers take on the role of innovator or

entrepreneur that issues, at least within the institution of community colleges, become actualized problems.

Moreover, my definition of issue identification suggests that at whatever stage a newly identified issue gains significant support, it shapes the ensuing action. How a given issue is defined and structured is key to how the policy, as a solution, will be constructed (Kingdon, 1984). Issue identification, then, creates a goal-seeking rationale for behavior (Dery 1984). It legitimates some solutions rather than others, invites participation by some political actors and devalues the involvement of others, focuses attention on some indicators of success and consigns others to the scrapheap of the irrelevant (Dery, 2000; Stone, 2002; Weis, 1989). Thus, issue identification and the subsequent placement on the policy agenda are highly consequential to subsequent action.

As previously stated, Rochefort and Cobb (1994) tend to conflate agenda setting (issue identification) and problem definition; however, their interpretation of the agenda process is influential in my own conceptualizing of issue identification. As such, their description explains the relevance of issue identification well. They assert that “[b]y dramatizing or downplaying the [issue] and declaring what is at stake, these descriptions help to push an issue onto the front burners of policymaking or result in officials' stubborn inaction and neglect” (Rochefort & Cobb, 1994, p. 3).

Furthermore, I contend that once an issue is brought to the level of agenda, that possible solutions, policies, and definitions have already been dismissed in light of prevailing ideologies. For if, as Stone (2002) contends, agenda setting is a “strategic representation of a situation” (p. 133), then once an issue has been identified there

remains little discussion as to the goals and expected outcomes. Rather, there is a discussion as to the level of severity particular policies will have in order for policies to address or redress the issue at hand.

Rhetorical Definition

The traditional textbook description of the policy process argues that once an issue has been placed on the policymaking agenda, there remains the need for policymakers to construct meaning and definition from the given issues (Birkland, 2011; Kraft & Furlong, 2008). However, as I have argued, if definition is embedded within given issues, as they are represented and promoted, then there is no legitimate debate over definition available. Rather, as Apthorpe and Gasper (1996) suggest, problems are framed in a way to determine which aspects will be implemented eventually as policy and which will be excluded from consideration. Hajer (1993) suggests that the process of framing allows for distinctions to be made in order to distinguish certain elements of issues (e.g., problems) from others. Apthorpe and Gasper (1996) further contend that these rhetorical frames are useful analytical tools for the examination of the problems addressed and their connection to the policies offered (Apthorpe & Gasper 1996).

During a critical discourse analysis of community college mission statements, Ayers (2005) found a dominant discourse of neoliberal ideology embedded within the mission statements as well as speeches related to the role and mission of the community college. In Ayers' (2005) analysis, the rhetorical frame is identified as neoliberal ideology; however, this does not necessarily indicate which policies will be followed. Yet, this identification provides a valuable tool once studies of community college

activities are investigated to determine which identified a connection between the rhetorical ideology and the underlying college policies, such as the case in Levin (2014). In short, while there is a strong likelihood that a rhetorical frame will be consistent with actionable policies, there is no guarantee of it. The same is true of policy investigations of an institution through other analytical tools, such as political discourse analysis.

Applying an analysis of political discourse to the study of environmental policies, Hajer (1993) argues that framing provides the policy analyst with useful new tools to analyze how certain relations of dominance are structured and reproduced. “After all,” Hajer argues, “determining the way a phenomenon is linguistically represented has repercussions for politically essential questions” (1993, p. 45). While I do not disagree with Hajer’s arguments, I argue that the dominant forces in the policy process are best identified within the revealed definition, not in the framing. However, I agree that framing might (although not necessarily) have a causal effect on the actual policy.

Revealed Definition

Anderson’s (2006) posits that policy and policy activities stem from problem definition. Therefore, it is reasonable to state that problem definition can be identified through an examination of policy activity. This does not mean that the rhetorical framing is of no worth; however, it is only of value in so far as it identifies or shapes the ideologies that underpin various policies. However, it may also serve a research purpose as in the case of Ayers’ (2005) research on ideology in mission statements. Moreover, I contend that once an issue is framed and included on the agenda, policy options are limited as a result of deeply held ideologies that may go unstated during earlier stages of

the policy process. Yet these ideologies come to the fore when policy is viewed as a series of revealed actions.

While the policy process is typically seen as objective, neutral, value-free, and simultaneously couched in legal and/or scientific language, this is not necessarily the case. Shore and Wright (1997) argue that dominant power structures utilize the rhetoric of neutrality in order to exercise dominance over the course of policy. To highlight this concept, Apthorpe and Gasper (1996) analyzed written policy documents that emphasized the way policy is couched as a problem solving activity for which there are obvious solutions. According to their findings, the dominant ideology into which problem solving is embedded neither invites nor accepts refutation, especially when potential policy takes a high moral posture; rather, by every trick and trope in the book, potential policy's hallmark is non-refutability (Apthorpe & Gasper 1996). Bosso (1994) makes the point more concisely arguing that for any problem at the institutional level "there are remarkably few alternatives actually under debate" (p. 184).

However, this is not to say that underpinning ideologies cannot be reframed depending on circumstances, thus altering the revealed policies. Rochefort and Cobb (1994) demonstrate this possibility by examining AIDS policy in the United States during the 1980's and 1990's. They argue that policy actions initially revealed reluctance by the government to create actionable or progressive stances due to a framing that cast AIDS as a "gay disease." However, over time this ideological stance transformed, thus allowing more progressive policies, evidenced by the naming of policy after a young boy (Ryan White) who contracted AIDS (Rocherfort & Cobb, 1994). This example demonstrates

that ideology is certainly capable of adapting and changing as dominant discourses are altered. However, Rochefort and Cobb's (1994) study, nonetheless, reaffirmed the role that dominant ideology has in shaping and directing policy actions of policymakers.

The above example serves to underscore the importance of underlying ideology and the effect it has on policy decisions. By using the concept of political discourses, Hajer (1993) argues that discursive elements frame, as well as shape, policy activities by focusing on some aspects in lieu of others. As such, dominant ideological frames, then, not only provide the frames in which problems are defined but also create a structure in which only limited actions are available to policy makers (Bosso, 1994; Hajer, 1993; Rochefort & Cobb, 1994). Included in this ideology is the issue of causality, or who is to blame (Rochefort & Cobb, 1994). Since policies typically are attempts to address current problems or redress previous errors, the attribution of blame allows for a policy to take a specific direction toward agreed upon goals (Rochefort & Cobb, 1994). As such, once an issue is placed on the agenda and placed into an ideological, or discursive, frame discussions about the policy are not about definition or causality, but rather about severity and relative intensity of policy offerings (Rochefort & Cobb, 1994).

Certain ideologies become embedded within the cognitive and cultural elements of an institution to the extent that they become taken for granted ideas that are accepted without discussion (Scott, 2014). Oliver and Barnes (2012) argue that one such dominant, or taken-for-granted, notion is the idea that individuals with disabilities are victims of personal tragedies. Therefore, when California Community Colleges receive a mandate that demands greater access for students with disabilities from both the general public as

well as the federal government, a policy crisis is created and an issue is placed on the policymaking agenda for consideration (Fairlough & Fairclough, 2012). However, placement of the issue into the dual frame of neoliberalism, prevalent within the community college (Ayers, 2005; Levin, 2007; 2014), and disability as personal tragedy (Oliver & Barnes, 2012) answers questions of causality and lays the groundwork for future policy decisions.

An example from history elucidates this process. Between 1909 and 1963, approximately 20,000 adults with disabilities in California were forcibly sterilized (Black, 2003). These policies were upheld by the U. S. Supreme Court in *Buck v. Bell* (1927). At the same time in Nazi-controlled Germany, Adolph Hitler issued written orders to begin a series of “mercy killings” of children and adults with disabilities, known as Action T4 (Black, 2003). Under the T4 campaign over 70,000 children and adults were euthanized between 1940 and 1941 (Black, 2003). On the surface, these policies had vastly different outcomes. However, to view these policies through an opportunities framework, one can recognize similarities. For example, both policies attempt to eliminate certain taken-for-granted human freedoms (reproduction, self-determination, life). A further similarity is evident. Both sterilization and death prevent not suffering in this life but rather subsequent generations and lead to the elimination of the policy objects (the disabled). Both policies demonstrate that the continued existence of the disabled person posed a political problem; however, implementation was conducted along vastly different paths. The elimination of people with disabilities is consistent with a eugenic ideology popular in much of the social thinking in both the U. S. and Europe at the time

(Black, 2003). This example illustrates that attention to policy implementation and traditionally studied outcomes can miss similarities in policy processes amongst policies, particularly policies targeted at similar populations, such as persons with disabilities.

Conclusion

The traditional model for policy development and process has been viewed largely as cyclical, based on the work of Harold Laswell (1951; Kraft & Furlong, 2008). However, I have argued for a linear model of policy development based on concepts of political discourse analysis (Fairclough & Fairclough, 2012) as well as the socially constructed nature of problem definition within the policy cycle (Rocheffort & Cobb, 1994). This approach views policy development as beginning with a crisis (Fairclough & Fairclough, 2012). This crisis could be an event (lawsuit brought against an institution), a mandate (legislation), or an outcome (low participation rates) [Fairclough & Fairclough, 2012]. Argumentation emanates from the crisis event (Fairclough & Fairclough, 2012). Argumentation is “a verbal, social activity, in which people attempt to criticize or justify claims” (Fairclough & Fairclough, 2012, p. 23). Furthermore, it is a complex activity that is not merely a strategy one employs toward an end. Rather, it is part of a larger discourse that positions one group of people in relation to another (Fairclough & Fairclough, 2012). As such, the argument that prevails following a crisis is not merely an example of clever strategy or rhetorical skills, but rather an exercise in power and position.

Problem definition derives from argumentation and is a normative act. It is the crisis that brings an issue to the policymaker’s agenda. Once an issue has been placed on the agenda, policymakers, informed by ideological constructs as well as concepts of

power and position, posit socially constructed problem definitions (Dery, 1984, 2000; Rochefort & Cobb, 1994; Weick, 1995; Weis, 1989). These definitions carry with them a limited set of policy options consistent with the ideological constructs that inform the given actors (Reich, 1988; Stone, 1998, 2002). Therefore, policy actions can be seen as a logical extension of constructs embedded in ideology; specifically, for this investigation, ideological constructs of disability within an institutional framework. Taken in total, this process explains the relationship between views of disability and subsequent policy outcomes within a specific institutional setting.

Chapter 3: Conceptual and Theoretical Frameworks

The purpose of this review is to define and examine concepts and frameworks central to this investigation consistent with a critical approach to social inquiry (Bohman, 2015). First, this review explains the concept of disability by explaining the commonly accepted models for disability within the literature (Aune, 2000; Denhart, 2008; Hahn, 1994, 1997; Mitra, 2006; Oliver, 1990). Second, this review discusses Titchkosky's (2011) Access Framework, as a means to explain access through the 4W approach to access (What, Where, When, Who). Finally, this review addresses the literature on theories of justice in so far as they provide a contextual lens for the explanation of issues of opportunity, access, and freedom for disabled students in higher education institutions, paying particular attention to the scholarship on the Capabilities Approach (Mitra, 2006; Nussbaum, 2006; Robeyns, 2003, 2011; Sen, 1992, 1999).

Disability

Since this investigation is centered on concepts of disabled students, I provide a model for viewing disability in order to develop a framework for later analysis. Existing literature outlines three broadly conceived theoretical categories in relation to disability: a deficit model, a socio-cultural model, and an interactional model (Jones, 1996; Mitra, 2006; Riddle, 2014; Terzi, 2005a). Public policy research related to problem definition (Birkland, 1997, 2011; Dery, 1984, 2000; Rochefort & Cobb, 1994; Weick, 1995; Weis, 1989) argues that ideological framing of problems or circumstances leads to a restriction of policy options as well as predetermines possible policy outcomes. Consistent with this scholarship, disability studies scholars have likewise argued that the model of disability

adopted by decision makers leads to constrained choice and inevitable policy outcomes (Mitra, 2005; Oliver, 1990; Oliver, 1996; Oliver & Barnes, 2012; Wolfensberger, 1995). Therefore, the identification of competing models of disability provides a foundation for the explanation of policy outcomes consistent with public policy literature.

Historically, the conventional approach to disability has been from a deficit or functional limitations perspective (Mitra, 2006; Pfeiffer, 2001). This perspective is cultivated from a positivistic scientific model and defines disability in the language of medicine, which leads to the perception of scientific credibility (Smart & Smart, 2006). A hallmark of the deficit model is the idea that disability is an individual experience that must then be individually ameliorated or accommodated (Oliver, 1990; Smart & Smart, 2006). Therefore, under the deficit, or medical, model, students with disabilities are perceived as having social or developmental deficiencies that intervention or medical services are designed to rectify (Aune, 2000). Under the deficit perspective, “. . . it is the expert’s job is to return the individual to ‘normalcy’” (Aune, 2000, p. 55; see also Pfeiffer, 2001). This perspective places the responsibility on the professional and views the individuals with a disability as a passive receiver of services (Mitra, 2006; Oliver & Barnes, 2012; Strange, 2000).

The nature of the deficit model contributes to barriers that exclude disabled people from integration into the general social milieu because the response to disability, under this model, is ameliorative (McKenzie, 2015; Silvers, Wasserman, & Mahowald, 1998). Therefore, to be labeled as disabled, under this model, carries a negative meaning because the disabled person is considered unable to fulfill standardized norms (Fook,

2000). This connotation connects the person to the label rather than as an autonomous individual (Fook, 2000). Within this model, it is the labels and attitudes which lead to a sense of “otherness” that becomes a rationale for the negative treatment of disabled individuals (McKenzie, 2015). This differential treatment has been referred to as ableism, which refers to the pervasive existence in society of prejudice against disabled individuals (Chivers, 2009). Furthermore, exclusion of disabled individuals from education, among other opportunities, is a consequence of the injustices that develop as a result of ableism under the deficit approach to disability (Chivers, 2009; McKenzie, 2015). Scholars argue that, while complex disability models offer more nuanced and complex views of disability than the medical, elements of disability-as-deficit continue to shape and affect disability-related policies, by emphasizing amelioration of the individual *vis-à-vis* accommodation of perceived deficiencies (Mitra, 2005; Oliver, 1990).

A second model, the social model, includes students with disabilities within the broader concept of human diversity. The social model (also referred to as a cultural model) allows for an analysis to include both individuals with disabilities and those without (Jones, 1996). The foundational tenets of the social model of disability consider impairment as a part of normal human variation (Denhart, 2008; Hahn, 1994, 1997; Oliver, 1990; Oliver & Barnes, 2012). This theoretical perspective views disability as a social creation rather than solely as an individual attribute (Mitra, 2006). Michael Oliver, a scholar and proponent of the social model argued, “[I]t is no individual limitations, of whatever kind, which are the cause of the problem, but society’s failure to provide

appropriate services and adequately ensure the needs of disabled people are fully taken into account in its social organizations” (as quoted in Riddle, 2014, pp. 14-15).

Within the literature, the social model takes a variety of forms such as the social model of the United Kingdom (Oliver, 1990), the social constructionist approach of the United States (Ashmore & Kasnitz, 2014; Hahn, 2002), and the minority model (Denhart, 2008; Hahn, 1994, 1997; Mitra, 2006; Oliver, 1990), as well as others. Specifically, these theoretical perspectives moved away from assumptions regarding the biological aspects of disability. Rather, social/cultural models focus on issues of relative social privilege, power, and oppression (Jones, 1996). Specifically, proponents of these models perceived prejudice and discrimination found in broader society as greater obstacles than medical impairments (Smart & Smart, 2006). Therefore, under a purely social model, any lack of progress, completion, or locally-defined success would be the result solely of the policies and structures, as well as the embedded biases and barriers within them. Policies that focus on the removal of social or environmental barriers in the physical as well as social milieu would be the expected outcome by decision makers who have adopted this model of disability (Denhart, 2008; Hahn, 1994, 1997; Oliver, 1990; Oliver & Barnes, 2012).

Social model theorists rely on a distinction between impairments and disability. While they acknowledge that impairments are individual and biological, they further argue that disability is what makes impairments a problem (Riddle, 2014). “In other words, impairment is not a problem, it is the way difference and impairment manifest themselves in our social institutions that results in a problems” (Riddle, 2014, p. 15). The

introduction of the social model by British scholars and theorists provided cohesion to the disability rights movement that had hitherto been lacking and, therefore, focused the political aims of the disability rights movement toward the removal of social barriers (Riddle, 2014). However, despite the gains of disabled individuals as a consequence of social model approaches to disability (including its influence in the passage of both the Americans with Disabilities Acts, and British Equal Opportunities and Race Relations laws), the social model has increasingly been seen as lacking in its power to explain fully the lived experience of disabled individuals or to offer substantive correctives to policy or institutional structures (Goodley, 2013; Shakespeare, 2006). Yet, the social model adherents remained dedicated to their model as the only means for explaining disability and the societal barriers experiences by disabled individuals (Goodley, 2013).

In recognition of the limits of a purely medical or a purely social approach to disability, disability scholars increasingly have begun to examine disability through a lens that acknowledges the exclusion, segregation, and societal oppression against disabled individuals while recognizing the need for supports, accommodations, and ameliorative acts related to individual impairments (Shakespeare, 2006). The interactional approach to disability, in contrast to both the social model and the medical model, acknowledges the contributions of the social/cultural models of disability, yet understands them within the conditions of existing physiological/psychological impairments (Mitra, 2006; Riddle, 2014; Shakespeare, 2006). Within the interactional approach, disability occurs when an individual is deprived of practical opportunities associated with an impairment or health condition (Mitra, 2006; Shakespeare, 2006). Furthermore, Shakespeare (2006) argues

that the distinction social model theorists make between disability and impairment is false as both are socially viewed. Moreover, Shakespeare (2006) argues that to make the distinction, as social model theorists do, fails to acknowledge that impairment is inextricably tied to disability insofar as societies' oppression and exclusion (e.g., disability) exist only when impairment (either real or perceived) exists as well. Therefore, disability under the interactional approach accounts for functional limitations that result from impairments, and takes into account social and cultural structures and policies, which, as under the social model, create disabling conditions (Mitra, 2006; Terzi, 2005a, 2005b).

This “both/and” approach to impairments and disability as opposed to the “either/or” approach under the medical and social models has received criticism from traditional social model theorists. However, by bringing the concept of impairment to the fore, Shakespeare’s both/and (both impairment and disability in contrast to either medical [e.g., impairment] or social [e.g., disability], moved critical disability studies in a new, albeit controversial, direction. According to Goodley (2013) “[F]or some, such as Tom Shakespeare the social model had become a shibboleth; a dogmatic totalizing epistemology against which all disability research was expected to judge itself. Any deviation from the materialist social model risked being dismissed for watering down the politics of disability” (p. 633).

Despite the critiques from social model theorists, over the past decade the intersectional approach to disability has gained ground by recognizing the reality of impairment without succumbing to the prevailing concept of the impaired body as

necessarily tragic (Goodley, 2013). The influence of the intersectional approach (recognizing both impairment and the need for habilitation, as well as disability, and the need to restructure environmental barriers) can be seen in diverse laws, statutes, and resolutions developed over the past 10-15 years such as the statement of findings in the 2008 amendments to the Americans with Disabilities Act (ADAAA 208) and the definition of disability within World Health Organization's International Classification of Functioning (WHO: ICF) which utilize an approach to disability consistent with an intersectional model (Goodley, 2013; Riddle, 2014). In short, the interactional approach, as put forward by Shakespeare (2006) and others (see also Goodley, 2013; Mitra, 2006; Riddle, 2014; Siebers, 2008), attempts to reconcile elements of functional limitations models with elements of social constructionist frameworks in order to create a holistic framework for the examination of disability including institutions such as the California Community Colleges, as well as providing a normative frame from which to move toward policy applications (Samaha, 2007; Shakespeare, 2006).

Access

Access, specifically the development of opportunity as well as barriers, is a fundamental component to any examination of social power, dominance, or political discourses (Chouliaraki & Fairclough, 1999; Fairclough & Fairclough, 2012; Fairclough, Mulderrig, & Wodak, 2009; van Dijk, 1993). "In the same way as power and dominance may be institutionalized to enhance their effectivity, access may be organized to enhance its impact" (van Dijk, 1993, p. 256). Therefore, I propose a model of access that is more complex than that typically offered in higher education scholarship. This model seeks to

explain how opportunity is institutionalized, and to address questions of both access and barriers within institutional policies.

Traditionally, the scholarship on access in higher education reveals a tendency in the literature toward a linear model in regards to access. For higher education scholars, access is typically seen to mean financial resources as well as K-12 preparation in addition to adequate cultural/social capital (Perna, 2006; Tierney & Hagedorn, 2002). This conceptual model, or some iteration with varying emphasis on one of the three barriers to access, provides a useful tool for use in structuring research. However, scholarship within policy as well as disability literature demonstrates a more complicated landscape of access to higher education for disabled students, one that emphasizes “accessibility” within the institution. Therefore, I applied Titchkosky’s (2011) model for access. While Titchkosky (2011) had previously used this framework for explaining access in a single Canadian university, I have taken the framework to apply to policies throughout a larger and more complex institution, namely the California Community College system.

Titchkosky (2011) asserts that belonging can be directly related, in relation to higher education institutions, to questions on accommodations and access. Issues of access thus represent a way to think about how disabled students are understood and valued in particular institutional spaces (Titchkosky, 2011). Furthermore, Titchkosky (2011) argues that access as a process connects to issues of inclusion and exclusion, identity, and equity and social justice. Therefore, this framework addresses the need for explanation, as well as connects to the larger issue of justice for disabled students.

As such, this framework uses a series of analytical questions, and their subsequent answers, in order to explain the manner in which access is afforded to disabled students within the institution. These questions, referred to as the 4W questions by Titchkosky (2011) are as follows: Who belongs (Who decides)? What is disability? Where is disability (or disabled students) located? When are accommodations (or disability) recognized/implemented? (Titchkosky, 2011). Each of these questions when brought to bear on policy documents allows for the integration of a larger body of disability and higher education scholarship for use in the examination and explanation of access for disabled students.

What is disability?

This question is useful to examine and explain the manner in which an institution through policies defines both disability and the problem of disability within a policy context. Titchkosky (2011), in examining what images and representations of disability are used, asks “What are we doing when we represent disability in the ways that we do?...What have we made disability to be?” (p. 49). Titchkosky (2011) states that definitions of disability shape the representation of disabled students. As well, the definition of disability consistent with both a social model and an intersectional model of disability is further used to represent and depict disability as a deficit, a lack of desired attribute or potential, and a problem. Again, consistent with models of disability that include social and environmental factors, Titchkosky (2011) argues that members of society are tied to the sociocultural-political meanings of how disability and non-disability are imagined and produced through institutional policy and practice. Therefore,

it is necessary to answer the question of “what is disability?” within a particular institution.

How disability is viewed within CCC policy has consequences for what policy options are available within the institutions. According to Reich (1988), “the most important aspect of political discourse is not the appraisal of alternative solutions to our problems, but the definition of the problems themselves” (p. 5). Therefore, the identification and explanation of how CCC define the “problem” of disability is required for a thorough explanation of subsequent policy. Disability scholars, specifically, have supported Reich’s (1988) claim arguing that the particular model used to explain disability has consequences on policy and institutional behavior (Oliver, 1990; Oliver & Barnes, 2012; Shakespeare, 2006; Wolfensberger, 1995). Moreover, according to these same scholars, an examination of amelioration reveals definitions of disability.

Furthermore, by identifying the prevailing view of disabled students as victim (consistent with a medical of deficit model) [Mitra, 2005], I am able to examine institutional policy in light of the accepted ideology, known as hegemony.

Hegemony is relations of domination based upon consent rather than coercion, involving the naturalization of practices and their social relations as well as relations between practices, as matters of common sense-hence the concept of hegemony emphasizes the importance of ideology in achieving and maintaining relations of domination. (Chuliaraki & Fairclough, 1999, p. 24)

As such, the tragic view of disability is inextricably linked to the practice of policy making by abled-bodied policymakers and policy implementers, by operating as the

ideological premise in which policies are defined and subsequently acted upon (Van Dijk, 2009). As such, I have examined policy to see if policies are directed at the amelioration of individuals (Medical Model), or directed at the restructuring of social and environmental factors (Social Model), or some amalgamation in which policies are directed at both individual as well as social and environmental factors (Intersectional Model). This examination allows for the explanation of how the institution defines what disability is as well as the ideological basis for policy response to said definition.

Where is disability located?

Once disability, or the perception of disability, has been identified, Titchkosky (2012) states that locating the placement of disabled individuals follows logically. Titchkosky (2011) argues that dominant narratives and ways of speaking about disability in language, images, policies, attitudes, and practices create barriers to the socio-spatial reality for the disabled within the institution (p. 74). Therefore, identifying the language of CCC policy as it pertains to disabled students allows me to explain where in the socio-spatial reality of the institution disability is placed. Again, as Titchkosky (2011) argues that access is predominately spatial, albeit a social one, it is necessary to explain the spatial placement, both socially and physically, of disabled students in the institutions in order to provide a deeper understanding of access within the institution.

When is disability recognized?

This question, again, draws on existing literature on barriers and allows for the examination of bureaucratic barriers embedded within an institution in order to explain the social and political, as well as physical placement of disabled students within the

institution. This question of “when,” addresses the medicalized view of disability as a tragedy (see also Oliver, 1990; Oliver & Barnes, 2012), in so far as institutional policy typically represents disability as a problem to be solved (Titchkosky, 2011). This medicalized view of disability as a problem influences the policies and political contexts that require time-consuming verifications and bureaucratic processes before accommodations, environmental changes, and, ultimately, access can be realized by disabled students (Titchkosky, 2011). Therefore, by utilizing existing scholarship on barriers (both specific to higher education as well as that focused specifically on disabled students), I am able to explain both the dominant view of disability as well as actual and potential barriers to timely access for disabled students.

The Access framework explains how disability is situated within a policy context and allows for the examination of dominant structures in both the language and policy. Furthermore, the access framework integrates various bodies of literature on community college, disability access, and disability models, as well as policy development.

Who belongs, who decides?

This question draws again on literature related to barriers, but also connects with literature on disability models in the manner in which disabled students and the institution interact. Titchkosky (2011) argues that in order to understand access one must reflect critically on who belongs in certain places, times, and contexts. In addition, Titchkosky (2011) argues that procedures and measurements, bureaucratic policies, institutional practices, and processes relate to the central questions of “who belongs” and the ways particular disabled bodies are valued and devalued in social spaces (p. 30).

According to Titchkosky (2011), “when disability is taken as something that basically does not belong, it allows for the management of disability as an exception” (p. 34), where disability is often understood and treated as “essentially excludable” (p. 39). Therefore, I draw on scholarship related to barriers and access to explain who belongs as well as who is vested with power. In short, the question of who belongs is a question of accessibility.

Accessible means that individuals with disabilities are able to independently acquire the same information, engage in the same interactions, and enjoy the same services within the same timeframe as individuals without disabilities, with substantially equivalent ease of use. (OCR Reference No. 10122118)

Therefore, the explanation of who belongs via institutional policy, as well as who makes those decisions, in light of scholarship on barriers imposed by ableist attitudes (Oliver, 1990; Silverstein, 2000), is necessary to explain access throughout the institution.

Disability and Theories of Justice

Taken as a whole, the theoretical literature on justice has failed to address disabled individuals adequately, assuming they are “beyond the scope of justice” (Riddle, 2014, p. 1). Another way of looking at this would be to state that “[t]raditional political morality thus has adopted a discourse in which disability, in virtue of the functional limitations it represents, is easily supposed to alter people so profoundly as to render them ‘naturally’ and irredeemably unequal” (Silvers, Wasserman, & Mahowald, 1998, p. 2). While there are various rationales for these representations, Riddle (2014) points to

two overarching reasons for the failure of justice theories to account for the experience of disabled individuals. First, many theories of justice, such as Rawls (1971), have ignored or excluded disabled individuals from particular theories of justice (Riddle, 2014). This critique is leveled most notably at contract theories of justice, in their broadest sense, due to the implicit, or explicit, removal of disabled persons from the contract.

[D]isability has been seen by political philosophers and disability scholars as posing serious challenges to contractarian and contractualist theories of justice: to theories based on hypothetical agreement, mutual advantage, or reciprocity.

(Wasserman, Asch, Blustein, & Putnam, 2015)

Second, Riddle (2014) argues that the failure can also be attributed to an “inadequate conception of disability (p. 4). According to Riddle (2014), “If we adopt a conception of justice that relies upon an insufficient understanding of what constitutes ‘disability,’ it is no wonder existing conceptions of egalitarianism are unable to promote the full inclusion of people with disabilities” (p. 4). Therefore, this review of literature will examine prevailing theories of justice in light of disabled individuals, paying particular attention to social contract, utilitarian, and egalitarian views of justice. Following this review, I will present the Capabilities Approach as first put forward by Nobel Laureate Amartya Sen (1992) as an alternate theoretical approach to justice for disabled individuals. The purpose of this review is to provide a context for the explanation of disability policy as well as demonstrate the existing gaps that continue to persist in theoretical approaches to disability and disabled individuals.

Social Contract Theories

Within social contract theories, the approach to justice espoused by philosopher John Rawls has seemingly dominated the discourse on social justice (Nussbaum, 2006; Riddle, 2014; Silvers, Wasserman, & Mahowald, 1998). A Rawlsian framework is, admittedly, not the only interpretation of a social contract approach to justice; however, I contend that the shortcomings of Rawls in regard to disabled individuals are consistent with other contract approaches to justice for disabled individuals. While a Rawlsian approach might appear amenable to individuals with disabilities, there are substantive concerns within the framework which pose potential problems for disabled individuals. Social contract theory, at least in a Rawlsian framework, develops from a hypothetical choice situation, the Original Position, in which a veil of ignorance precludes reliance on the contractor's actual limitations (Wasserman, Asch, Blustein, & Putnam, 2015).

Whether or not Rawlsian contractors know their limitations or not, they can be assured that they are not permanently disabled. Rawls clearly stated that the idealized society whose "basic structure" was the subject of hypothetical agreement was restricted to members who would be "fully-cooperating" over the course of their adult lives. Rawls further made the assumption that this restriction would exclude individuals with the most profound disabilities (Rawls, 1993). Rather than defending the assumption or providing for some representation in the contract, Rawls relegated the fate of the disabled to a legislative process (Wasserman, Asch, Blustein, & Putnam, 2015). Rawls argued that participation in the Original Position was reserved for those who had the capacity to form and revise the conception of the good, and the capacity for a sense of justice, the capacity

to act on and apply fair terms of cooperation (Rawls, 1993). The above, added to the fact that disabled individuals are excluded from participation in decision making under Rawlsian framework, argues that the disabled have no (or little) sense of their own good or a capacity for justice (Riddle, 2014; Silvers, Wasserman, & Mahowald, 1998; Wasserman, Asch, Blustein, & Putnam, 2015).

Disability scholars have further argued that under a Rawlsian framework resources, and the distribution of resources, become the chief concern. However, under either a social model interpretation of disability or an intersectional model, societal and environmental inequities need to be rectified in order to provide justice for disabled individuals, an element lacking under Rawls (Riddle, 2014; Silvers, Wasserman, & Mahowald, 1998; Wasserman, Asch, Blustein, & Putnam, 2015). Furthermore, if resources are the chief concern, and disabled individuals are assumed to be generally dependent and unproductive, they are likely to be denied the very resources that would enable them to contribute to and produce in a just society (Nussbaum 2006).

Utilitarian-Functional Theories

Social contract theory, particularly within a Rawlsian framework, dominates much of the discourse regarding social justice, and, therefore, rightly deserves extensive review (Riddle, 2014; Robeyns, 2006; Silvers, Wasserman, & Mahowald, 1998; Wasserman, Asch, Blustein, & Putnam, 2015). However, claims for alternative frameworks of justice are presented in the literature as frameworks for justice for disabled individuals, including the Utilitarian framework espoused by John Stuart Mill and Peter Singer, among others (Wasserman, Asch, Blustein, & Putnam, 2015). In

contrast to other distributive justice or egalitarian frameworks for justice, Stein (2002) argues that Utilitarianism offers the greatest benefit for disabled individuals amongst several possible frameworks.

Utilitarianism is more convincing than resource egalitarianism or welfare egalitarianism as a theory of how resources should be distributed between disabled people and nondisabled people. Unlike resource egalitarianism, utilitarianism can redistribute resources to the disabled when they would benefit more from those resources than nondisabled people. Unlike welfare egalitarianism, utilitarianism can halt redistribution when the disabled would no longer benefit more than the nondisabled from additional resources. (Stein, 2002, p. 1)

Yet Sen and others have argued that under a utilitarian framework, individuals with disabilities would receive fewer resources with the assumption that the disabled would derive less benefit from the resources distributed (Robeyns, 2006; Stein, 2002). As such, a utilitarian theory fails to address restrictions adequately that prevent differential rates of return on investments, particularly in education (Robeyns, 2006). This inequity can lead to the marginalization of groups who are seen to benefit little from investment in their education, for example, disabled students (Nussbaum, 2000; Robeyns, 2006). Furthermore, the emphasis on individualized utility, or human capital, is akin to the concerns expressed by disability scholars regarding the pathological approach inherent within the medical model of disability (Oliver, 1990). As such, there is little room for such an individualized (functional) approach in modern disability scholarship.

Disability scholars and advocates have also rejected the utilitarian-functionalist framework as presented by Singer (2011), among others, arguing that this framework devalues the lives of disabled individuals and relegates many disabled individuals (including infants with disabilities) to a status of non-human (Robeyns, 2006). Singer (2009) proposes that the needs of disabled individuals should be sacrificed in an effort to ration managed health care costs. While this approach may not be representative of all Utilitarian philosophers, as Singer is the chair of ethics at a leading Ivy League institution, as well as a noted author and speaker on a number of ethical issues, it is not surprising that a number of disability advocates and scholars have challenged Singer and the utilitarian-framework he endorses. In a letter signed by over twenty leading national disability rights groups (including: National Council on Disabilities, Not Dead Yet, Little People of America, National Association of the Deaf), as well as countless individual disability advocates, Singer and the Utilitarian-functionalist framework are challenged as being out of line with the concept of justice for disabled individuals (Not Dead Yet, 2009). “The American disability community . . . recognize that public policy has to embrace the inherent equality of the lives of people with disabilities—and public policy must reflect that in practice” (Not Dead Yet, 2009). In short, the Utilitarian framework, presented by Singer and other proponents, fails to provide a framework that accounts for justice for disabled individuals. Rather, this approach has the tendency, as evidenced by Singer (2009, 2011), of devolving into a eugenic approach to disability consistent with those espoused in the United States leading to forced sterilizations in the early 1900s as

well as those promulgated by Nazi Germany leading to the Holocaust (Black, 2003; Mostert, 2002; Wimborne, 2012).

Egalitarian or Rights-Based Justice

In addition to contract approaches and utilitarian approaches to justice, Fundamental rights or egalitarian justice has also been viewed as a meaningful framework for discussion of justice for disabled individuals (Robeyns, 2006). In his defense of Utilitarianism, in contrast to distributive or egalitarian justice frameworks for disabled individuals, Stein (2002) argues that egalitarian justice for disabled individuals can be achieved only through the implementation of utilitarian principles, thus negating egalitarianism as a distinct, or viable, framework. For this reason, Sen (1973) also rejects egalitarianism as a viable approach to justice for disabled individuals. Robeyns (2006), drawing on the work of Sen and Nussbaum, further identifies three problems with the rights approach to education specifically: 1) rights can be overly rhetorical without substantive policy support; 2) rights can be easily reduced to legal rights alone without any moral underpinning; 3) rights can be seen as a mere fulfillment of legal obligation in policy; and, 4) rights approaches can be too dependent on government legislation without social backing. Furthermore, while egalitarian approaches often address the societal/environmental barriers encountered by disabled individuals (Silvers, Wasserman, & Mahowald, 1998), they often fall short in redressing internal limitations associated with physiological impairments. As such, egalitarian or rights-based approaches to justice support substantial elements within the social model of disability, yet they fail to account

for individualized limitations as identified by advocates for the intersectional model of disability (Riddle, 2014).

Capabilities Approach to Justice

Several alternatives for assessing outcomes for purposes of political and social equality seem more responsive to the disabling role of the social environment, than others. Of these, the Capabilities Approach has developed over the past several decades as an influential and viable alternate framework for the analysis of justice in relation to disabled individuals (Riddle, 2014). Developed initially by Nobel Laureate Amartya Sen (Riddle, 2014; Robeyns, 2003; Sen, 1992), the Capabilities Approach was refined further by others, most notably Martha Nussbaum (2006). The Capabilities Approach provides a philosophical framework concerned not only with the resources an individual has but also with what that individual can do with them, with individuals' "capability" of engaging in a number of valuable outcomes (referred to as "functionings") such as forming intimate relationships and having rich sensory and aesthetic experiences. Capabilities scholars argue that in distinguishing the capabilities approach from human capital or human rights claims states that the intrinsic value of education is not as important as the evaluation by critics of how policymakers create access to high quality education experiences for all in a just society (Robeyns, 2003).

The Capability Approach, then, is a normative framework for the assessment of poverty, inequality, and the design of social institutions (Robeyns, 2011; Terzi, 2005a). Therefore, it functions as a valuable framework for the assessment of institutions of higher education as it concerns, specifically, what elements social institutions and

policies should aim to equalize. Closely aligned with this, the framework provides two areas for policymakers to use in order to address issues relative to equality and justice: 1) the choice of the space in which to assess equality, and 2) the kind of measurement that should be used in comparing people's relative advantages and disadvantages (Mitra, 2006; Robeyns, 2011; Terzi, 2005a).

The Capability Approach argues that equality and social arrangements should be evaluated in the space of the essential, or actual, opportunities people have to achieve the valued activities and ends that are integral to their well-being (Terzi, 2005).

“Functionings” refer to the outcomes and accomplishments (also referred to as “beings and doings”) that individuals have reason to value. In other words, “functionings” are the achievements made possible through opportunities. Walking, reading, being well nourished, being educated, having self-respect, or acting in one's political capacity are all examples of functionings (Robeyns, 2011). Capabilities are the actual opportunities and essential freedoms people have to achieve these valued functionings.

[Capabilities are] various combinations of functionings (beings and doings) that the person can achieve. Capability is, thus, a set of vectors of functionings, reflecting the person's freedom to lead one type of life or another . . . to choose from possible livings. (Sen, 1992, p. 40)

Sen provides a useful example that clarifies the distinction between functionings and capabilities by comparing the situation of a starving person to that of someone who fasts (Sen, 1992). Clearly, the person starving is deprived of the capability—that is, the actual effective opportunity—of choosing whether to eat or to fast, whereas the person who

fasts retains their freedom to choose, and hence they have the relevant capability. This example points out, then, that participation in a given activity (such as a college education) is an inaccurate measure of the availability or access to that activity. For the capability approach, fundamental for the assessment of equality is what people are actually able to do in a given context and hence the sets of capabilities, or opportunities, available to them, rather than the activities they can enjoy at any given time (Robeyns, 2011; Terzi, 2005a).

The focus of the capability approach is, therefore, on the actual, essential opportunities people have and on their choice among possible alternatives. This focus allows for the pursuit of an individual's well-being and facilitates self-determined planning on the basis of their individual choices, rather than their lack of choice (Robeyns, 2003). In other words, the fundamental question that stems from the capabilities approach pertains to whether or not individuals have access to the same opportunities, not whether or not they participate at the same levels and with the same essential freedom. Within the context of higher education, the capabilities approach moves the conversation from one focused on participation to one focused on access and opportunity, particularly political and structural access as opportunities.

As such, disability, within the Capabilities Approach, occurs when an individual is deprived of practical opportunities associated with an impairment or health condition (Mitra, 2006). Therefore, disability under this approach accounts for functional limitations that result from impairments (Medical Model), and takes into account social and cultural structures and policies, which, as under the social model, create disabling

conditions (Mitra, 2006; Terzi, 2005a, 2005b). In short, the Capabilities Approach, as put forward by Sen (1973, 1992, 1993, 1999), attempts to reconcile elements of functional limitations models with elements of social constructionist frameworks in order to create a holistic framework for the examination of disability within the particular context of CCC, as well as provides for a normative frame from which to move toward policy applications (Samaha, 2007). This approach is most consistent with the “both/and” approach put forward by Shakespeare (2006) in contrast to the more rigid “either/or” (Medical or Social) approaches put forward by competing scholars. Indeed, the Capabilities Approach offers a theoretical perspective on disability that acknowledges physiological impairment as well as socio-cultural structures and contexts. In other words, the Capabilities Approach accommodates an intersectional approach to disability that acknowledges physiological, or individual, needs, while simultaneously acknowledging the possibility of oppressive and unjust social and environmental structures (Riddle, 2014; Robeyns, 2003; Shakespeare, 2006).

Under the Capabilities Approach, each individual has a different capacity to turn resources into opportunities, also referred to as a “conversion factor” (Robeyns, 2003, 2011; Sen, 1992, 1995). Moreover, based on the difference between various individuals’ personal conversion factors as well as the manner in which particular barriers affect individuals uniquely, the Capabilities Approach provides a framework that takes these into account. The framework I offer does acknowledge the variances and complexities in the interrelation between and among barriers to educational opportunities and policies, practice, and structures for disabled students. Moreover, this model does not purport to be

exhaustive in its evaluation of access. Rather, this model serves to bring attention to the varied components associated with a disabled student's ability to access educational opportunities, with each of the questions in Titchkosky's (2011) Access framework serving as part of a complex effort toward a larger policy explanation, as opposed to a definite end in and of themselves. Therefore, this framework provides a tool to examine educational policies consistent with the Capabilities Approach.

While social/cultural models provide opportunity for an evaluation of the college environment, including policy, most fail to account fully for the relationship between the physiological impairment and the social/cultural milieu. Furthermore, these models including the social, cultural, minority, human variation types fail to provide a normative foundation for the development and creation of policy or social adjustment (Samaha, 2007). The Capabilities Approach to disability, on the other hand, acknowledges the contributions of the social and cultural models of disability, yet understands them within the conditions of existing physiological/psychological impairments. Therefore, I utilize the Capabilities Approach consistent with this evaluative approach, rather than as a means for creating a rubric for species membership or as a tool for determining one's humanity as others have proposed (Nussbaum, 2006) and subsequently critiqued as consistent with utilitarian approaches (Singer, 1996), which can eventually lead to the further marginalization of individuals with disabilities (Siebers, 2008; Reindeers, 2008).

Conclusion

While competing theories of justice contend to present a framework in which to construct a just society, most fail to provide a legitimate space for the disabled.

Furthermore, most of these same theories fail not only fail to provide space, but actually further marginalize the role of the disabled in either the creation of justice (Rawls) or in the actual expression of justice (Utilitarian). Therefore, even though proponents of the Capabilities Approach acknowledge limitations of the approach (Riddle, 2014), it remains the most promising and justifiable foundation or viable theory in which to construct a theory of justice for the disabled. The Capabilities Approach provides a framework through which I examine and explain the role of essential freedoms (access and opportunity) as necessary for a just society (Nussbaum, 2000; Robeyns, 2011). Furthermore, the Capabilities Approach places the emphasis on opportunities afforded to individuals through policies rather than outcomes, which can be a misleading account of justice (Riddle, 2014; Robeyns, 2011; Sen, 1992). As such, the Capabilities Approach is most consistent with the evaluation of disability policy, particularly in higher education, as the intent of federal disability laws (ADA, 1990; ADAAA 2008) are premised, not on outcomes, but rather on opportunities for disabled individuals (Burgstahler, 2014; Silverstein, 2000).

Chapter 4: Methods and Methodology

This investigation examines two, seemingly, compatible concepts present within scholarship related to the U. S. community college. The first is the historical “open-access” mission of the community college. The second is the “equal access” impetus within the American with Disabilities Act (42 USC 12101 et seq.). These two concepts taken in tandem would reasonably lead one to assume that the U. S. community college exists as a bastion of welcome and access for individuals with disabilities. However, this assumption does not hold upon further scrutiny.

The opportunity for community colleges to serve students who represent a variety of demographic constituencies is directly tied with their open-access mission (Dowd, 2008). Indeed, community colleges serve more first-generation, part-time, nontraditional-age, low income, minority, and female students than any other type of public higher education institution (Bailey & Morest, 2006). This helps to explain why open-access policies have long been a quintessential facet of U. S. community colleges and the scholarship relative to the community college (Dowd, 2008). Rhoads and Valadez (1996) conclude that open admission policies, along with the diverse student bodies that accompany these policies, “represent higher education’s commitment to democracy” (p. 7).

While community college critics debated the authenticity and purposes of the “open access” mission, disability advocates were promoting access and opportunity in the larger society (Mayerson, 1992). These efforts culminated in the passage of the Americans with Disabilities Act of 1990, further amended in 2008. Congress argued in

ADA that “the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity” (P.L. 110-325, Section 12101.7). The phrase “equality of opportunity” is in keeping with the Capability Approach to essential freedom within much of the scholarship on Capacity and Capabilities. Congress’ attempt to improve access while protecting against discrimination in the Americans with Disabilities Act Amendments Act (ADAAA, 2008) built upon a legal tradition developed in Section 504 of the Vocational Rehabilitation Act (1973) and continued with ADA (1990). To apply and paraphrase Rhoads and Valadez (1996), the equal opportunity aspect of ADAAA (2008) represents Congress’ commitment to democracy and access.

Research Questions

After a review of the scholarship on disability, access, and policy, I developed the following research question, as well as subsequent sub-questions, which will serve to guide the investigation. In what ways do California Community College (CCC) policy, structures, and practices shape educational opportunities for disabled students? How do institutional policies and structures reflect power relations within the CCC? How do these policies and structures reflect existing discourses relative to individuals with disabilities in higher education and the society at large? In what ways do ideological constructs shape policies of access in CCC? Does the placement of Disabled Students Programs and Services (DSPS) in categorical programming shape access for disabled students? If, so how?

According to Maxwell (2012), research questions that deal with process are much more readily addressed through a qualitative study. Furthermore, qualitative research is

an effective tool for the exploration of social and educational problems (Barbour, 2008); it cuts across disciplines, fields, and subject matters. As described by Merriam (1998), “[q]ualitative research is an umbrella concept covering several forms of inquiry that helps us understand and explain the meaning of social phenomena with as little disruption of the natural setting as possible” (p. 5).

Site Selection

The California Community College (CCC) was chosen as the research site for several reasons. First, I am currently employed within Disabled Students Programs and Services at a CCC. This situation allows me access to documents, sites, and personnel that I might otherwise not be aware of outside of my position. Second, California Community Colleges serve the largest number of disabled students in the United States (Raue & Laurie, 2011). The California Community College Chancellor’s Office (2013) estimated that 98,000 disabled students were enrolled in California’s 112 community colleges during the 2009-2010 academic year, out of total student population of 2.5 million (CCCCO, 2013). Third, during the more than thirty years from 1978 to 2010, the percentage (of total student population) of disabled students attending U. S. colleges and universities increased from 2.6% to nearly 11% (Gajar, 1998; Henderson, 1999; Newman et al., 2010; Raue & Laurie, 2011). However, California’s disabled student population, while accounting for more than 1 of every 7 disabled student nationally, and nearly 1 of every 3 disabled community college students nationally, represents a percentage of the total state’s community college enrollment that has not seen a significant proportional population increase since the 1970s. Therefore, not only are disabled students

underrepresented in CCC, but also California is significantly behind the national average of disabled students' enrollment (Raue & Laurie, 2011). This participation, while not the central focus of the current investigation, presents a compelling case for further inquiry into the CCC.

Finally, California has played a central role in the development and promotion of the community college, as well as its access agenda (Meier, 2013), particularly for those students diagnosed with disabilities (Galvin Group, 2012). As part of the mission of DSPS, Education Code, Title 5, California Code of Regulations (5 C.C.R. § 56000-56076) were enacted in 1976 through the passage of Assembly Bill 77 (Lanterman), which directly funds support services and instructional programs for students with disabilities in the CCC through targeted (categorical) restricted funds (Galvin Group, 2012). The last revision of Title 5 Regulations for DSPS was passed by the California Board of Governors in July, 2015 (5 C.C.R. § 56000-56076). The mission of DSPS is to assist colleges in the provision of services and accommodations for students with disabilities. Furthermore, DSPS works to support disabled students' achievement of educational goals and outcomes as well as to meet the requirements of federal and State non-discrimination laws, including Sections 504 and 508 of the federal Rehabilitation Act, the Americans with Disabilities Act (ADA), and State Government Code Sections 11135-11139.5 (Galvin Group, 2012).

Methodology and Methods

From a policy perspective, qualitative research can be helpful to identify current challenges within policy and identify sources of problems, as well as for the

determination of potential solutions. Thus, qualitative research methodology serves as an ideal choice for this investigation, which seeks to discover ways in which CCC have defined policy problems and converted federal/state mandates into policy, in relation to opportunities for disabled students to be educated.

Qualitative research has several essential characteristics, including the use of a natural setting, the researcher as a key instrument, multiple sources of data, inductive data analysis, a variety of participants' meanings, emergent design, at least one conceptual lens, interpretive inquiry, and a holistic account (Creswell, 2007; Mason, 2002; Maxwell, 2005). Moreover, Denzin and Lincoln (2005), Mason (2002), and Maxwell (2005) emphasize that qualitative research should be multi-method, involve an interpretive, naturalistic approach, and attempt to make sense of phenomena in terms of the meanings people bring to them.

From among the several methods that can be used to conduct qualitative research, I determined a critical analysis of policy and political discourses to be an appropriate means for explaining how issues of dominance and marginalization are enacted through institutional policies (Ball, 2006; Fairclough & Fairclough, 2012; Fairclough, Mulderrig, & Wodak, 2009; van Dijk, 2003; van Dijk, 2009). Furthermore, Critical Discourse Analysis (CDA), while not diminishing academic rigor, "openly and explicitly positions itself on the side of dominated and oppressed groups and against dominating group." (Fairclough, Mulderrig, & Wodak, 2009, p. 358). Disabled students, as an oppressed and marginalized group (Silverstein, 2000), present an opportunity for research consistent within CDA scholarship.

Fairclough and Fairclough (2012) argue that any critical social analysis must include both a normative framework as well as an explanatory framework (Bohman, 2015). As such, Titchkosky's (2011) access framework, with its use of the "4 W question model," provides an opportunity to explain how CCC policies define what disability is, where disabled students are situated, who is empowered in the DSPS process, and when disability is recognized and/or services provided. The use of Titchkosky's (2011) model allowed me to integrate literature on disability models, barriers, and policy development into the explanation of CCC disability policy. Furthermore, the Capabilities Approach, as developed by Sen (1973, 1992, 1993, 1999) and Nussbaum (2000, 2006), acts as a normative framework in which to contrast existing structures, policies, and practices with individual opportunities and capabilities.

Data Collection

Consistent with Creswell (2007), this investigation employed multiple sources of data, utilized the aforementioned conceptual lenses, and took place within the existing state community college system (Denzin & Lincoln, 2005; Mason, 2002; Maxwell, 2005; Merriam, 1998). Multiple data sources allowed me to triangulate my data in order to check for validity within the data collection process. "Triangulation," according to Stake (2005), "has been generally considered a process of using multiple perspectives to clarify meaning, verifying repeatability of an observation or interpretation" (p. 454). Therefore, I employed analysis of various documents within this investigation in order to look for distinctions and consistencies across various document types. Furthermore, since my

aims in this investigation were to examine actual policies, not interpretations or unwritten institutional practices, I relied solely on the textual data in my examination (Scott, 2001).

Document Analysis

The data sources I utilized were those of existing disability policy texts used in the CCC. I relied primarily on policies delineated within California Education Code Title 5, specifically those policies within Division 6 of Title 5 which govern the CCC. This included California Educational Code Title 5, Division 6, Chapter 7, Subchapter 1 (5 C.C.R. § 56000-56076), and other reports, and policy documents specific to DSPS operations. However, I also included those policies that are not included in Chapter 7 Subchapter 1, yet include disabled students in the policy scope, for example, California's Student Success Act of 2012 (Seymour-Campbell) as well as the CCC Program and Course Approval Handbook (PCAH) as delineated in California Educational Code Title 5, Division 6, Chapter 6 (5 C.C.R., § 55000-55252). These sources were identified and chosen based on my knowledge, as a tenured-faculty and department chair within DSPS, as well as through informal conversations with deans, directors, faculty, and staff associated with DSPS (both directly and indirectly) in the state. The use of select experts is consistent with "purposeful selection" (Cresswell, 2007, p. 97) relying on experts to inform "selection decisions [which] require a considerable knowledge of the setting of the study" (p. 99).

In spite of frequent use as a mere supporting role in qualitative research (Prior, 2003), the use of policy texts provides a description of programs and provides the context with which to interpret outcomes (Clarke, 1999; Prior, 2003). Furthermore, an evaluation

of processes can provide information on how specific services came into being, their rationale, and the anticipated outputs and outcomes (Clarke, 1999). Therefore, the use of documents allowed me to investigate elements consistent with the Capabilities Approach to access and space for opportunity within policy and structures, as well as ideology embedded within a policy development framework.

Critical theorists contend that textual analysis of documents is incomplete without a contextual framework in which to place the text (Ball, 2006). In other words, the textual analysis of a policy cannot be separated from the contextualized ‘real-world’ setting of the practitioner (Ball, 2006). While recognizing the value of this perspective, I chose an approach that contextualized the policies within an ideological framework (as opposed to a practitioner-focused framework) as this study is focused largely on policy definition and development rather than implementation.

The use of document analysis within critical social analysis has shown to be useful for articulating power relations, access, and social justice, particularly when analyzed as part of a larger discourse. Fimyar (2008) employed policy discourse analysis to examine policy documents in post-communist Ukraine. The study identified the dominant and competing discourses embedded in policy documents and connected them to broad socio-political contexts and theoretical frameworks (Fimyar, 2008). Iverson (2008) examined twenty-one diversity action plans in United States Land-Grant Universities in order to explain how these plans fit into larger discourses on diversity and social justice. Iverson’s (2008) study recommended policy action consistent with a social justice framework. Allan (2008) used policy discourse analysis to examine the “silences

within policy reports, explaining that understanding silences can help determine how to solve social problems through policy (49).” As well, Allan (2008) described policy discourse analysis as “an explicit focus on policy discourses and the discursive shaping of positions through policy” (p. 49), and applied lenses of feminism, critical analysis, and post-structural perspectives in order to frame a study to explore how dominant discourses of femininity, access, and professionalism play a role in women’s status within university settings.

Analysis

This investigation sought to explain not only the ways in which CCC policy shapes access but also the ways in which disabled students are afforded justice (or not) consistent with the Capabilities Approach. Since “social power is based on privileged access to socially valued resources, such as wealth, income, position, status, force, group membership, education or knowledge” (van Dijk, 2003 p. 254), any analysis of policy must account for the manner in which access is politicized through an ideological lens. As such, I employed a critical analysis that drew on Fairclough and Fairclough’s (2012) definition of critical social analysis as well as Ball’s (2006) implementation of Policy Discourse Analysis. Critical theoretical approaches to social analysis must be normative and explanatory (Bohman, 2015; Fairclough & Fairclough, 2012). In other words, there is the need for a normative frame in which to provide a rubric from which to construct an argument of social justice. Also, there is a need for a conceptual frame that explains why, or how, certain activities take place and thus lead to the argued injustice. For this investigation, I employed the Capabilities Approach as a normative lens and Titchkosky’s

(2011) access framework for use within a larger policy discourse analysis as a means for explanation.

Policy discourse analysis (PDA) examines the structure and content of the language of policies and policy making. Ball (2006) asserts that “policies embody claims to speak with authority, they legitimate and initiate practices in the world, and they privilege certain visions and interests” (p. 26). Policy discourse analysis aims to understand policy formation, practice, and the contexts surrounding them (Ball 2006). Ball (2006) describes policy as statements about what could or should be, as well as current practices. Ball claims that “[d]iscourse provides a particular and pertinent way of understanding policy formation, for policies are, pre-eminently, statements about practice—the way things could or should be—which rest upon, derive from, statements about the world—about the way things are” (p. 26). Ball (2006) further defines the difference between policy as text and policy as discourse. Policy as text is a symbolic representation of a complex and ever-changing process of policy, a product of compromise, negotiation, serendipity, and agenda. Policies as text are “interventions into practice” and “both a product and a tool of production” (Ball, 2006, p. 46). Policy as discourse is a way of making meaning, understanding policy formation, and understanding contexts through the order and organization of words, phrases, chunks of language. Allan (2008) describes PDA as “an explicit focus on policy discourses and the discursive shaping of positions through policy” (p. 49). The approach highlights the discursive power of policy by providing a tool for me to investigate the written text of

policy documents as primary data sources situated within a larger sociopolitical context (Allan 2008).

Therefore, beginning with Fairclough and Fairclough's (2012) concept of argumentation embedded in their definition of politics as "imposing representations and how representations serve power" (p. 22), I analyzed the data collected through the aforementioned conceptual lenses related to ideological constructs of problems and argumentation (van Dijk, 2009), as well as the conceptual frame of access (Titchkosky, 2011). These lenses were used to answer questions on the larger discourse of opportunity and access for disabled students in CCC.

Access Framework

The iterative analytical process identified by Anfara, Brown, and Mangione (2002) was used, although slightly modified, to guide the analysis of data. The first level of analysis examined surface or manifest content within the data (Maxwell, 2012), following Titchkosky's (2011) 4W framework for explaining access. Using the access framework, I examined policy consistent with Titchkosky's (2011) understanding of access as more than a single act of inclusion or participation. Rather, access is a way of perceiving, understanding, and orienting to social spaces within an institutional environment (Titchkosky, 2011, p .3). As such, this review looked for answers to Titchkosky's (2011) four questions, based on existing literature on policy, disability, and higher education, particularly community colleges.

Therefore, during the first iteration of analysis, I examined CCC policies which directly addressed disabled students, specifically DSPS Title 5 Regulations (5 C.C.R. §

56000-56076), CCC Chancellor's Office implementation guidelines (CCCCO, 1993), and the DSPS funding allocation formula currently in use as detailed in CCCCCO internal reports and presentations (CCCCO, 1997; Galving Group, 2013) in order to answer the following questions in conjunction with Titchkosky's (2011) access framework. The first question looks for an answer to the question "What is disability?" In other words, I examined the policy to see which model of disability is evidenced from the resulting policy. Second, I attempted to locate disability by asking "Where is disability (or disabled students) located?" To answer this question, I identified how the policies either segregate or integrate disabled students as well as disabled services. Third, I looked for an answer to the question "When are accommodations (or disability) recognized/implemented?" To answer this question, I relied on literature related to barriers and access in order to identify how barriers to accommodations were addressed by various CCC policies. Finally, I examined "Who belongs?" as well as "Who is vested with authority/power to make these decisions?" For this question, I looked at policies in order to identify how disabled students were empowered or marginalized as part of the process relative to their ability to make decision that affect their lives.

Capabilities Approach

Following this first level of analysis, for the second level, I again reviewed the data in order to determine how the previous level provides information that aids in explaining what Gee (2014) refers to as the capital "D" discourse within the CCC as it relates to disabled students and opportunity (Anfara, Brown, & Mangione, 2002). I also examined CCC policies outside of Chapter 7 Subchapter 1 of Title 5 in order to examine

policies that addressed disabled students within their scope and reach, as well as to provide a comparison between policies that specifically include disabled students and those which include other targeted populations. These opportunities were analyzed consistent with the normative framework of the Capabilities Approach, particularly the concept of essential freedoms as put forth by Sen (1992, 1999) and Nussbaum (2000, 2006) [see also Robeyns, 2003, 2011]. Birkland (2011) asserts that it is important to keep in mind that the actual act of identifying a problem is as much a normative judgment, emerging from social and cultural constructs, as it is an objective statement of fact. Therefore, if analysis proceeds from the identification of a problem, and the problem is identified normatively, then, keeping with a normative framework such as the Capabilities Approach, subsequent analysis is itself normative, or at least incapable of holding onto a veneer of impartiality.

This level of analysis, again, examined definitions of disability within conventional models in order to expand the identification and explanation of social spaces for opportunity within a Capabilities framework, as well as explain the larger discourse in which CCC policy related to disabled students occurs. Taken in total, both of these composite elements allowed for a thorough explanation of the various spaces for opportunity as well as the forces acting upon and shaping those opportunities for disabled students in CCC.

Chapter 5: Findings

The purpose of this current investigation is threefold. First, since the Capabilities Approach (Robeyns, 2011; Sen, 1999) as well as the prevailing cultural, social, and minority models of disabilities (Ashmore & Kasnitz, 2014; Hahn, 1994, 1997; Oliver & Barnes, 2012) all place issues of access for disabled persons within the policies and structures of institutions, society, and the culture at large, this investigation seeks to explain disability policy within a specific higher education institution, the California Community College (CCC). Second, this investigation seeks to explain the ways in which policy design in CCC shapes educational opportunities, as well as barriers to opportunities, for students with disabilities. Third, this investigation seeks to explain the ways and extent to which policies and political discourses in CCC legitimate power relationships between disabled students and the CCC, specifically in regards to disabled students' access to educational opportunities within CCC.

The first four chapters of this investigation offered an introduction to the problem surrounding opportunity for disabled students in community colleges, a review of the literature surrounding access, disability policy, as well as policy development, and the methodological design that was utilized for this study. This chapter will now present the findings that were selected from the data collected and analyzed using the conceptual frameworks that were constructed for the purpose of this study.

A qualitative study employing a critical analysis of policy and political discourses was identified as an appropriate means for explaining how issues of dominance and marginalization are enacted through institutional policies (Ball, 2006; Fairclough &

Fairclough, 2012; Fairclough, Mulderrig, & Wodak, 2009; van Dijk., 2003; van Dijk, 2009). Furthermore, Critical Discourse Analysis (CDA), while not diminishing academic rigor, “openly and explicitly positions itself on the side of dominated and oppressed groups and against dominating group.” (Fairclough, Mulderrig, & Wodak, 2009, p. 358). Disabled students, as an oppressed and marginalized group (Silverstein, 2000), presented an opportunity for research consistent within CDA scholarship. As such, each of the two overarching conceptual frameworks—access and opportunity—will be presented sequentially as analysis of access within CCC policies informs the analysis and larger discourse on opportunities within CCC policy.

Policies and Practices within California Community Colleges

Prior to a policy analysis, some background for the investigation is needed in relation to Title 5, California Code of Regulations, Division 6, Chapter 7, Subchapter 1 (5 C.C.R., § 56000-56076), hereafter referred to as Title 5, as well as state funding policies and practices for CCC’s Disabled Students Programs and Services (DSPS). The use of the policy documents and sources, as well as subsequent analyses, serves to answer the following research questions for this study.

In what ways do California Community College (CCC) policy, structures, and practices shape educational opportunities for disabled students? How do institutional policies and structures reflect power relations within the CCC? How do these policies and structures reflect existing discourses relative to individuals with disabilities in higher education and the society at large? In what ways do

ideological constructs shape policies of access in CCC? Does the placement of DSPTS in categorical programming shape access for disabled students? If so, how?

Title 5, California Code of Regulations

Disabled Student Programs and Services (DSPTS) (5 C.C.R., § 56000-56076) were enacted in 1976 through the passage of Assembly Bill 77 (Lanterman), which funded support services and instructional programs for students with disabilities in the California Community Colleges (Galvin Group, 2012). CCC are required to adhere to guidelines outlined in Section 56000-56076 of Title 5 (Galvin Group, 2015). These guidelines create specified interpretations of Section 504 of the Vocational Rehabilitation Act (1973) as well as the Americans with Disabilities Act (1990) and the Americans with Disabilities Amendments Act (2008). The stated specific guidelines in Title 5 include all of the guidelines and definitions contained in the Federal counterpart legislation, yet go further in specifying how and to what degree services, supports, and accommodations should be implemented. A student may be protected under Section 504 and the Americans with Disabilities Act because he or she has a history of disability or is perceived as having a disability. However, such individuals may not qualify for services from the DSPTS program because they do not have a current impairment or their impairment does not give rise to an educational (e.g., functional) limitation (California Community Colleges Chancellor's Office, 1997). Furthermore, Title 5 (5 C.C.R., § 56000-56076) specifies how services can be funded consistent with California code. Finally, Title 5 (5 C.C.R., § 56000-56076) specifies the official name of the disability

service departments in California Community Colleges as Disabled Student Programs and Services (DSPS).

In 1992, the California State Legislature authorized the Board of Governors for the CCC to “adopt rules and regulations for the administration and funding of educational programs and support services to be provided to disabled students by community college districts” (California Education Code. Section 84850: Article 6. Handicapped Students). Under that mandate, disabled students were defined as “persons with exceptional needs enrolled at a community college who, because of a verified disability, cannot fully benefit from classes, activities, and services regularly provided by the college without specific additional specialized services or educational programs” (California Education Code. Section 84850: Article 6. Handicapped Students).

In 1997, the California Community College Chancellor’s Office created a set of guidelines for implementing section 504 regulations in accordance with the state legislative mandate of 1992. Implementing Guidelines for the Title 5 Regulations for Disabled Student Programs and Services (DSPS) provide technical assistance to DSPS staff. In addition, they provide guidance to community colleges regarding their legal and fiscal responsibilities to DSPS offices and toward students with disabilities. Comprised of four Articles and twenty-nine Sections, the Guidelines for the Title 5 Regulations for DSPS (CCCCO, 1997) are the fundamental document for DSPS program management and policy development. It is noteworthy that the Guidelines are not regulations that have gone through the full regulatory approval process. College DSPS staff are encouraged, but not required, to use the Guidelines in administering DSPS programs (CCCCO, 1997).

It remains the responsibility of each college to establish programs, policies, and procedures that meet the requirements of Title 5, Sections 56000-56076 (CCCCO, 1997). However, the guidelines associated with Title 5 (5 C.C.R., § 56000-56076) do attempt to operationalize concepts related to “qualified individual” as well as “reasonable accommodations” as they pertain to students within California’s community college system.

In July of 2015, the CCC Board of Governors “approved sweeping changes to the DSPS Title 5 regulations, specifically to sections 56000-56076” (Official Memorandum from CCC Chancellor’s Office dated October 27). As such, in the analysis or citation of Title 5 regulations, specifically sections 56000-56076, within this investigation, I will use the updated language of the new regulations.

DSPS Funding Policies

According to section 56060 of Title 5 (5 C.C.R., § 56060), community college districts are “entitled to receive funding pursuant to Education Code Section 84850 to offset the direct excess cost, as defined in Section 56064 (5 C.C.R., § 56064), of providing support services or instruction, or both, to students with disabilities enrolled in state-supported educational courses or programs.” According to several policy reports commissioned by the CCCCCO, including *Services to Students with Disabilities: A study of workloads and costs* (July, 2000) and *Effects of Reduced Funding on Disabled Student Programs and Services in California Community Colleges* (June, 2012), in 1991, an Allocations Task Force was organized with representatives from the California Community College Chancellor’s Office (CCCCO) and eleven DSPS college programs

(Galvin Group, 2012; 2015). An outcome of the task force was a formulation developed giving differing funding weights to the seven different disability categories. The task force identified “the specific services (other than instruction) provided to students in each disability group and then estimated how much of each service a typical student (that is, a student enrolled for nine units with an average need for services) would receive in an adequately funded program” (CCCCO, 1997). As a result, funding for DSPS services are calculated by a weighted student count (WSC) based on full-time equivalent student (FTES) funding of students served in a given year by DSPS. These amounts are separate from general apportionment of which all students (including DSPS students) are calculated (Galvin Group, 2013).

These categories included a catch-all category identified as “other disabilities,” which provided for students without one of the otherwise identified diagnoses. It states, “This category includes all students with disabilities, as defined in Section 56002, who do not fall into any of the categories described in Sections 56032-42 but who indicate a need for support services or instruction provided pursuant to Sections 56026 and 56028” (Section 56044). By 1993, two more categories had been added to the list of approved disabilities by turning two categories (physical disability and communication disability) into four separately funded categories in order to establish the WSC currently used within CCC (CCCCO, 1997; Galvan Group, 2013; 215).

The current categories calculated within WSC funding connect a diagnosis with a student count weighted, to what was initially determined to be an approximate level of funding needed in order to provide adequate services. However, Title 5 does not specify

the weights, rather it specifies the categories. As such, even though the fact that Title 5 (5 C.C.R., § 56000-56076) was updated by the Board of Governors in September of 2015, no new WSC has been assigned to the new categories. According to the Board of Governors (BOG), the determination was “[t]o allow districts time to adjust processes and policies related to the changes” within Title 5. As a result of the delay, audits based on WSC funding have been delayed until July 1, 2016. According to the BOG, “Beginning with 2016-17 the Contracted District Audit Manual will be updated and colleges will be audited based on the new regulations. Audits for 2015-16 will be based on the ‘old’ regulations” (Official Memorandum from CCC Chancellor’s Office dated October 27, 2015).

Therefore, current funding, as described in a report commissioned by the Chancellor’s office in 2012 titled *Final Report on Evaluation of the “Other Disabilities”* (Galvin Group, 2013), DSPS Reporting Category is based on previous disability categories until such a time as the Board of Governors can determine new WSC for the updated definition (5 C.C.R., §56002 and 56032-56044). Therefore, the current WSC funding categories are: 1) Physical disability at a WSC of 1.32 FTES (Section 50632); 2) Deaf and Hard of Hearing (DHH) at a WSC of 4.87 FTES (Section 50634); 3) Blind and Low Vision at a WSC of 2.25 FTES (Section 50635); 4) Learning disability at a WSC of 3.15 FTES (Section 50636); Speech and language impairment at a WSC of 1.0 FTES (Section 50634b); 5); 6) Acquired brain injury at a WSC of 3.34 FTES; 7) Developmentally delayed learner at a WSC of 1.29 FTES (Section 56040); 8)

Psychological disability at a WSC of .38 FTES (Section 56042); and, 9) Other disabilities at a WSC of 1.32 FTES (Section 560444) [CCCCO, 1997; Galvin Group, 2013].

While all CCC are required to meet the requirements of Section 504 and the ADA, the acceptance of DSPS funding is voluntary on the part of each college. If colleges choose to accept DSPS funds allocated by the state they are governed by the Title 5 regulations. While a college could refuse the DSPS funds and not be subject to the requirements of Title 5 regarding DSPS, currently none of the 113 CCC have chosen to refuse funds (Galvin Group, 2013; 2015). Furthermore, as pointed to in a memo by then Chancellor Scott, the refusal or lack of DSPS funding does not remove the legal obligations for colleges regarding the civil rights of people with disabilities and the need to provide services and accommodations to ensure that a college's programs and services are accessible to, and usable by, students with disabilities. Chancellor Scott wrote, "the requirement to provide the reasonable accommodations and services, as specified in the federal and state statutes listed below, is an institutional obligation, regardless of adequate state funding for DSPS" (Letter to CCC campuses from Chancellor Scott dated September 14, 2012).

However, the institution's ability to maintain the requirement to provide reasonable accommodations is limited due to the inflexible nature of the funding model. An illustration based on data available in the *Final Report on Evaluation of the "Other Disabilities"* (Galvin Group, 2013) provides a useful tool for the explanation of this problem through a comparison of the budgetary needs, relative to disabled students, in two California institutions, City College of San Francisco and Palo Verde Community

College. According to the above referenced report, as well as data readily available on the institution's website, the City College of San Francisco, in fiscal year 2009/2010, had a college-wide operating budget of 193.5 million (CCSF, 2013) while the DSPTS categorical funded allocation (based on WSC) through the Chancellor's Office was 1.7 million (Galvan Group, 2013), or roughly eight-tenths of one percent of the total college budget. According to estimates projected by the Chancellor's Office, the addition of a single full-time Deaf student, estimated at \$100,000 in expenditures (Galvan Group, 2013), would alter the DSPTS budget by over five percent. However, that same expense when born across the institution would account for less than one-tenth of one percent relative to the general operating budget.

The above contrasts with the example of Palo Verde College whose annual DSPTS budget in fiscal year 2009/2010 was \$144,147 (Galvan Group, 2013) and represents one percent of the 2009/2010 general operating budget of \$12 million dollars (Palo Verde College, 2011). However, if the same student entered Palo Verde College (assuming they required similar accommodations and supports), the added expense of \$100,000 would account for 69% of the current DSPTS operating budget, a relatively staggering amount. However, the same amount would account only for less than one-percent of the general operating budget.

The above two examples demonstrate the lack of flexibility of DSPTS budgets when an institution works with the WSC formula for categorical funding. These demonstrate the significant impact that a single disabled student could have on an entire DSPTS budget as compared to the limited effects on the budget of the institution.

However, there is an additional problem with the use of specific and targeted funding, such as the WSC model for DSPS budgets. According to a recent report by the Galvan Group (2013), services to students with disabilities are neither predictable nor standardized across campuses. For instance, some campuses will use DSPS funds to provide accommodated testing, while other campuses will integrate that cost into the general instructional budget (Galvan Group, 2013). Furthermore, despite approximate accommodation costs identified by the 1991 task force, there has been no consistent application of said costs in any one district or even across campuses in a single district (Galvan Group, 2013). This indicates the high level of variability that exists in DSPS programs due to the WSC funding model, as tied to individual deficits rather than the institutionalization of costs within a general budget.

Furthermore, as budgets were restricted, following the 2008 economic crisis, individual DSPS departments reported changes in their approaches to providing and funding accommodations and services: these actions have altered not only DSPS budgets but also the services provided to students through these departments (Galvan Group, 2013). Following the economic recession of 2008, the state of California froze spending across campuses, increased student tuition (per unit), and cut DSPS categorical funding by nearly 50% (Galvan Group, 2013). Because budgets were so heavily predicated on categorical funding, individual college DSPS departments fell out of compliance with federal mandates relative to services and accommodations. These failures to comply prompted the aforementioned memo by Chancellor Scott in order to remind campuses to continue to provide legal and necessary accommodations to disabled students.

Access

Using the access framework, I examined policy consistent with Titchkosky's (2011) understanding of access as more than a single act of inclusion or participation. Rather, access is a way of perceiving, understanding, and orienting to social spaces within an institutional environment (Titchkosky, 2011). As such, CCC policy documents demonstrate that disabled students are perceived and understood on the basis of their deficits. Therefore the orientation towards disabled students by the college is one of pathology, diagnosis, and segregation while presenting a claim to be working toward access and inclusion. This is because CCC policy defines what disability is in terms of loss, deficit, and dysfunction, locates where disability services are found in terms of categorical funding and specialized structures, decides when services and supports can be implemented apart from the student, and assigns who is authorized to verify by means of certification and power disparities. In order to explicate this definition of access I will explain each of the responses to Titchkosky's (2011) access framework (4W Framework) based on answers to a series of four questions (what, when, where, who) related to access, thereby demonstrating how each of the four questions are answered within CCC policy.

What is Disability?

Disability scholars argue that how disability is viewed, or the model used as a lens, determines subsequent policy and practice in regards to disabled individuals (Oliver, 1990; Riddle, 2014; Shakespeare, 2005; Wolfensberger, 1973). As such, an explanation of the disability model identified in CCC policy documents requires thorough detail in

order to explain further aspects of access and opportunity within CCC policy, particularly Title 5 (5 C.C.R.).

California employs a medical model of disability, and this places the emphasis on individual deficits and diagnoses in need of amelioration while simultaneously placing the onus for remediation of deficits or validation of diagnoses solely in the domain of professional experts. Title 5 defines a student with a disability as “a person enrolled at a community college who has verified disability which limits one or more major life activities” (5 C.C.R., § 56002). The implementation guidelines for DSPS clarify this definition by stating that under Title 5 (5 C.C.R., §56002 and 56032-56044), a qualified individual is a student who meets the following four criteria: 1) The student is enrolled at a community college, 2) the student has a verifiable disability, 3) the student is unable to benefit fully from the regular programs and services offered by the college due to the educational functional limitation of a disability, and 4) the student needs specialized services or instruction in order to mitigate these disability related educational limitations (CCCCO, 1997).

Each of the aspects of this definition reinforces a medical model of disability. The first criterion which requires that a student be enrolled at a community college prior to receiving services, presents a barrier that will be examined more fully in the section that details when a student receives accommodations. However, the second criterion, “who has verified impairments” (5 C.C.R., § 56002), is consistent with a medical approach as well, which emphasizes professional diagnosis over individualized self-reports (Oliver,

1990; Riddle, 2014). Section 50006, titled “Determination of Eligibility,” details the process of verification.

(a) In order to be eligible for academic adjustments, auxiliary aids, services and/or instruction authorized under this chapter, a student must have a disability which is verified pursuant to subdivision (b) which results in an educational limitation identified pursuant to subdivision (c) of this section.

(b) The existence of a disability may be verified, using procedures prescribed by the Chancellor, by one of the following means: (1) observation by certificated DSPTS staff; (2) assessment by certificated DSPTS staff; or (3) review of documentation by certificated staff provided by appropriate agencies or certified or licensed professionals outside of DSPTS.

(c) The student's educational limitations must be identified by certificated staff and described in the Academic Accommodation Plan (AAP) required pursuant to Section 56022. Eligibility for each service provided must be directly related to an educational limitation consistent with Section 56000(b) and Section 56001. (5 C.C.R., § 56006)

At no point in the verification process does Title 5 state explicitly that a student, their family, or a chosen representative’s perspective be taken into account in order to inform the process. Rather, terms such as “professional,” “appropriate,” and “certificated” reinforce an approach to disability that marginalizes those with disabilities further.

The next criterion states that a student with a disability is a student who has a disability “which limits one or more major life activities” (5 C.C.R., § 56002). This is

articulated more clearly in the CCCCO Implementation guidelines. “The student is unable to fully benefit from the regular programs and services offered by the college due to the educational limitation of a disability” (CCCCO, 1997).

An educational limitation means a disability related functional limitation in the educational setting. This occurs when the limitation prevents the student from having full access to and equal participation in the educational process including classes, activities, or services offered by the college to students without disabilities, without specific additional academic adjustments, auxiliary aids, services and/or instruction. (5 C.C.R., § 56001c)

This definition of limitation, consistent with a deficit, or medical model, approach, places the limitation solely within the student through the inclusion of the phrase “disability related functional limitation.” The addition of this phrase in Title 5 illustrates the emphasis on an individualized approach to disability.

The last criterion used, “the student needs specialized services or instruction in order to mitigate these disability related educational limitation” (CCCCO, 1997), further speaks to the medical model of disability. Under a medical model approach to disability, it is the individual who is in need of amelioration or rehabilitation, not the institution. By choosing to focus solely on the student’s needs regarding services or instruction required to mitigate a deficit, the policy maintains a deficit lens and fails to provide for structural remediation consistent with a social model approach or intersectional approach to disability.

However, while the criteria set forth in Section 56002 inform what disability means, CCC policy goes further in explaining what it means to be disabled, or what disability means. Indeed, DSPS funding policy reinforces the medical view of disability as stipulated in Title 5, by attaching a number to specific disabilities by means of a weighted student count (WSC). Furthermore, by listing the qualified categories of disability within Title 5, CCC requires students to conform to a particular labeling convention, which many disabled individuals may not be comfortable with, or reject outright (Longmoore, 2009; Siebers, 2009; Silvers, Wasserman, & Mahowald, 1999).

Finally, the language within Title 5 (5 C.C.R., § 56002 and 56032-56044) used to describe the various categories of disability further reflects a medical model way of conceptualizing disability in which students are seen for their lack of ability rather than how institutional barriers might contribute to student struggles. Both an intersectional model (Riddle, 2014; Shakespeare, 2005) and a social model (Hahn, 1994, 1997; Oliver, 1990; Oliver & Barnes, 2012) would acknowledge that limitations to the educational process are not solely the responsibility of the student, but rather the result of structural bias (social model), or at least a combination of student limitations and structural barriers (intersectional model). It is the language of the medical model which places the onus on the student that is most readily identified within CCC policy.

Sections 5032 through 50644 (5 C.C.R., §5032-50644) identify approved disability categories. Throughout these sections, evidence of this use of language persists. Section 56032 states that a physical disability “is defined as a limitation in locomotion or motor functions. These limitations are the result of specific impacts to the

body's muscular-skeletal or nervous systems, and limit the student's ability to access the educational process.” This definition states that the limitation of locomotion and/or motor function is what limits the student’s access to the educational process. Furthermore, section 50634 states that “Deaf and Hard of Hearing (DHH) is defined as a total or partial loss of hearing function that limits the student's ability to access the educational process.” Here, deficit language is coupled with a student’s responsibility for lack of access. Indeed, the exact phrase “that limits the student's ability to access the educational process” (5 C.C.R., §5032-50644) is used ten times, once in conjunction with each identified disability category. In short, CCC states that the responsibility for lack of access to the educational process rests entirely on the student, a position consistent with a medical model.

Where is Disability Located?

Section 56020 of Title 5 (5 C.C.R., §56020) states that “Each community college district receiving funds pursuant to this subchapter shall employ reasonable means to inform all students and staff about the availability of academic adjustments, auxiliary aids, services and/or instruction.” According to recently published internal reports commissioned by the Chancellor’s Office (Galvin Group, 2013; 2015; MPR Associates, 2012), all current colleges within California’s community college system receive funding through categorical funds directed toward DSPS.

That CCC policy places services and accommodations for disabled students within categorically funded stand-alone programs creates a situation in which said programs, as well as the students served in those programs, are at risk of isolation and

marginalization from the general campus community (for service and funding).

Titchkosky (2011) argues that dominant narratives and ways of speaking about disability in language, images, policies, attitudes, and practices create barriers to the socio-spatial reality for the disabled within the institution.

In 2012, the CCC Chancellor's Office commissioned a report in order to see how funding cuts during the 2008-2009 fiscal crisis affected community college policy and practice. The report title, *Effects of reduced funding on Disabled Student Programs and Services in California community colleges* (MPR Associates, 2012), found that DSPS programs, based on a categorical funding model, experienced deeper cuts (40% compared to 10%) than the rest of the CCC system which follows a general, or integrated, funding model.

In response to California's fiscal crisis, Governor Schwarzenegger signed into law major revisions to the 2009–10 State Budget on July 28, 2009. For certain programs, including Disabled Student Programs and Services (DSPS) within the California Community Colleges, these revisions imposed deep funding reductions of nearly 40 percent... while in that same time period DSPS student counts have increased by almost 10 percent. As a result of the funding reductions, many colleges reported having to reduce staffing, eliminate services, curtail hours of operation, or take other measures to cut costs. (MPR Associates, 2012, p. 1)

While the report found that DSPS cuts were coupled with increases in disabled student enrollments, it also identified that this funding led to increased pressure on DSPS offices to alter policy and practice in order to meet only the legal minimums. In response to

potential alterations of both practice and policy, then Chancellor Scott admonished colleges to maintain services by arguing that “the requirement to provide the reasonable accommodations and services, as specified in the federal and state statutes listed below, is an institutional obligation, regardless of adequate state funding for DSPS” (Letter to CCC campuses from Chancellor Scott dated September 14, 2012). According to MPR Associates (2012), Chancellor Scott’s admonishment did not prevent the colleges from cutting DSPS services.

DSPS programs have responded to budget cuts by reducing or eliminating certain services. Many DSPS coordinators and staff reported that they have continued to provide the services and accommodations students need or that are required by law, but have been reducing or eliminating other services important to student success that are not explicitly mandated by law. Among the services most likely to be eliminated or reduced were tutoring for students with disabilities, learning disability assessment, counseling, assistance with faculty and other college staff, special classes, and general tutoring (MPR Associates, 2012, pp. vi-vii).

Moreover, coordinators identified under Title 5 (5 C.C.R., § 56048b) as the individuals responsible for the implementation of local policy and practice have recognized the problems of access associated with a segregated service and funding model. On the one hand, coordinators are an integral component of the segregated service and funding model, however, on the other hand, “[c]oordinators reported delays in approving and/or delivering services and accommodations almost across the board” (MPR Associates, 2012, p. 24).

Coordinators worked to protect services and accommodations for students with disabilities, and on some campus, coordinators were told that “any service we had that was not mandated was eliminated so we could continue with mandated accommodations and services.” However, coordinators commonly argued that the fact that a service is not mandated does not mean it is not necessary. As one coordinator said, “There are too many administrators and faculty who equate reasonable to the very minimum we are required by law to provide for accommodations. In some cases, this is not reasonable.” (MPR Associates, 2012, p. 24)

As such, the segregated nature of DSPTS places services, as well as the disabled students served, in a social position outside the general milieu in services and funding. This segregation, according to coordinators charged with implementing state policy at a local level, has a negative effect on disabled students. Furthermore, this segregation reinforces policies, attitudes, and practices which comprise barriers to the socio-spatial reality for the disabled within the institution (Titchkosky, 2011, p. 74).

When is Disability Recognized?

The question, again, of the recognition of disability draws on existing literature on barriers and allows for the examination of bureaucratic barriers embedded within an institution in order to explain the social and political, as well as physical, placement of disabled students within the institution. This final question, “when,” addresses the medicalized view of disability as a tragedy (see also Oliver, 1990; Oliver & Barnes, 2012), in so far as institutional policy typically represents disability as a problem to be

solved (Titchkosky, 2011). Furthermore, in order to answer the question fully a more complex view of access must be employed in order to explain when disabled students are “accessing” the institution.

“Access” is generally referred to in ways synonymous with the above interpretations in use within higher education scholarship. Traditional definitions of access as a enrollment into or participation in an institutional setting answer the question of “when” with enrollment and or participation (Adelman, 2003; Bailey & Morest, 2006; Dowd, 2003; Goldrick-Rab, 2010; Perna, 2006; Rosenbaum, Deil-Amen, & Person, 2006; Shaw & Goldrick-Rab, 2006; Tierney & Hagedorn, 2002). However, the definition of access that disability scholars employ requires a more varied and nuanced response to the question of when (Longmoore, 2009; Marshak, Wieren, Ferrell, Swiss, & Dugan, 2010; Silverstein, 2000; Titchkosky, 2011). The term “accessible” is more nuanced and generally used within disability legislation and scholarship to put forth a more complex view of “access.” According to the U. S. Office of Civil Rights: “Accessible means that individuals with disabilities are able to independently acquire the same information, engage in the same interactions, and enjoy the same services within the same timeframe as individuals without disabilities, with substantially equivalent ease of use” (OCR Reference No. 10122118, p. 1). The phrase “within the same timeframe as individuals without disabilities” answers the question of when a disabled student should be able to gain access to services and accommodations.

However, as noted above, disabled students encounter barriers in their efforts to access the social space of the institution. These barriers were identified as pertaining to

both attitudinal as well as institutional barriers. According to Silverstein (2000), “Attitudinal barriers are characterized by beliefs and sentiments held by nondisabled persons about persons with disabilities” (p. 1695). These have been explained in the context of the identification of the model of disability used within Title 5 (5 C.C.R.), specifically a Medical Model of Disability. Institutional barriers, however, “include policies, practices, and procedures adopted by entities” (Silverstein, 2000, p. 1695). The four institutional barriers (geographical, architectural, procedural, and curricular), noted above, most often prevent the timeliness and ability of disabled students to access both services and accommodations as well as full integration into the campus milieu (Barnes, 2007; Oliver & Barnes, 2012; Tremain, 2006). Through examination of Title (5 C.C.R.,) in light of identified barriers, I will explain how written CCC policies either ameliorate said barriers or exacerbate the same.

First, procedural barriers are barriers that exist in the policies and procedural, or bureaucratic, steps beyond those experienced by non-disabled peers (Cook, Gerber, & Murphy, 2000; Duggan, 2010). The addition of procedural steps, even those designed to approve services, constitute barriers that prevent timely access for disabled students (Cook, Gerber, & Murphy, 2000; Duggan, 2010). Title 5 creates procedural barriers in a number of locations throughout the policy. Under the section titled Determination of Eligibility, Title 5 states that “(a) [i]n order to be eligible for academic adjustments, auxiliary aids, services and/or instruction authorized under this chapter, a student must have a disability which is verified pursuant to subdivision (b) which results in an

educational limitation identified pursuant to subdivision (c) of this section” (5 C.C.R., § 56006a). Part B of Section 56006 notes the means by which a disability is verifiable.

The existence of a disability may be verified, using procedures prescribed by the Chancellor, by one of the following means: (1) observation by certificated DSPTS staff; (2) assessment by certificated DSPTS staff; or (3) review of documentation by certificated staff provided by appropriate agencies or certified or licensed professionals outside of DSPTS. (5 C.C.R., § 56006b)

As such, the disabled student must progress through additional procedures, either conducted within the local institution or by experts within the broader community, in order to access services and accommodations. This procedural gatekeeping, coupled with the findings in *Effects of reduced funding on Disabled Student Programs and Services in California community colleges* (MPR Associates, 2012) which indicate that timeliness of services can be curtailed by the existing funding mechanisms in place in DSPTS act as a barrier for disabled students in their attempts to gain access in a timely manner.

A second barrier identified in the scholarship is geographical barriers. While these can be identified as physical placement on a local campus, they can also include where educational resources are located (Duggan, 2010; Pierangelo & Giuliana, 2008). Section 56000 of Title 5 in delineating the responsibilities of local colleges indicates that integration is a goal of DSPTS services.

Programs receiving funds allocated pursuant to Education Code section 84850 shall meet the requirements of this subchapter. Any academic adjustments, auxiliary aids, services and/or instruction funded, in whole or in part, under the

authority of this subchapter must: (a) not duplicate services or instruction which are otherwise available to all students; (c) be directly related to the students' participation in the educational process; (d) promote the maximum independence and integration of students with disabilities. [5 C.C.R., § 56000(a)(c)(d)]

Here, Title 5 attempts to prevent a barrier by stipulating that DSPS cannot duplicate services and that services should be conducted within integrated settings. However, as addressed above, the existence of categorical programming, as well as funding that accompanies that programming, creates, if not a real barrier then at least a potential barrier for students.

Architectural barriers present obstacles not only in the form of ramps and doorways but also in the manner in which desks are situated in a computer lab (Duggan 2010). Title 5 is largely silent on the issue of either architectural accessibility with the exception of a one line item that delineates allowable expenses within the DSPS allocation.

Allowable expenses may include the removal or modification of minor architectural barriers providing the funds expended do not exceed 1% of the current year DSPS allocation, unless an exception to the funding limitation has been granted by the Chancellor's Office (5 C.C.R., § 56064b).

Yet larger federal legislation specifically addresses the need for barrier prevention and removal. The passage of the Architectural Barriers Act (1968), The Americans with Disabilities Act (1990), and the Americans with Disabilities Act Amendments Act (2008) all place federal mandates on institutions to development accessible physical

environments. Therefore, while Title 5 does little to ameliorate this barrier it also does not add to it.

Scholarship also indicates that technology can be assessed as another aspect of the built environment, in so far that technology creates an electronically or virtually built environment just as integral to access as the physically constructed environment of the campus (Dietrich, 2014). Policies can then be evaluated against principles of universal design within the built environment as first identified by architect Ron Mace in the 1950s (Center for an Accessible Society, 2014). In 1998, Congress identified this and as well passed amendments to the Rehabilitation Act of 1973. The statutes within Section 508 of the Rehabilitation Act of 1973 (PL 93-112, 29 U. S.C. § 794d) require institutions to build accessibility into all technology that is purchased, used, managed, or developed by institutions. As such, Title 5 does not address, in detail, the technological landscape of specific institutions.

A final barrier identified is related to curricular (or academic) limitations. Curricular barriers result from both an inability and unwillingness of faculty to practice principles of universal design in learning, thus negating the need for institutions to provide accommodations and services that can be both stigmatizing as well as burdensome to the institution financially (Burgstahler, 2014; Dietrich 2014). The literature identifies universal design in learning (UDL) as the mechanism for removing, or at least mitigating, curricular barriers (Burgstahler, 2014; CAST, 2014; Dietrich 2014). Yet, Title 5 does not encourage the implementation of a universally designed environment in either curricular or technological environments. While an educational

institution that incorporates UDL in various environments is ideal for promoting access (Dietrich, 2014), Title 5 promotes an individualized approach. Section 56006 states that “[t]he student's educational limitations must be identified by certificated staff and described in the Academic Accommodation Plan (AAP) required pursuant to Section 56022” (5 C.C.R., § 56006c). According to Section 56022, Academic Accommodation Plans are individualized according to each student’s perceived limitations.

Each college shall generate an Academic Accommodation Plan (AAP) and maintain a record of the interactive process between each DSPS students and a DSPS certificated staff member regarding the academic adjustments, auxiliary aids, services and/or instruction necessary to provide the student equal access to the educational process, given the educational limitations resulting from the student’s disabilities. In addition, when a student is enrolled in educational assistance classes the AAP shall define measureable progress toward the goals of each class. (5 C.C.R., § 56022)

Therefore, according to Title 5, specifically section 56022, a UDL approach to curricular barriers is not warranted as accommodations are localized to the individual student’s “educational limitation resulting from the student’s disabilities.” Yet, despite language in section 56022 that evokes a Medical approach to disability, the language within section 56022 demonstrates elements of consistency with Titchkosky’s (2011) definition of access. Specifically, the socially “interactive process between each DSPS students and a DSPS certificated staff member” (5 C.C.R., § 56022) appears to create a social space in which both disabled students and professional staff interact as equals. However, that a

disabled student must navigate various procedural barriers, as previously identified, prior to their being allowed to engage within the seemingly equal social process, counters this first appraisal.

Finally, the use of the phrase “necessary to provide the student equal access to the educational process” (5 C.C.R., § 56022) appears to promote an environment in which access is primary. Yet, this phrase is coupled with the added language, “given the educational limitations resulting from the student’s disabilities” (5 C.C.R., § 56022). Therefore, the language of section 56022 asserts that access is conditional on perceived disabilities of the individual. As such, it is not the institution, or its policies, that creates an environment of open-access. Rather, access, according to section 56022 is provided on an individual basis to students as their perceived limitations allow.

Who Belongs? Who Decides?

To conceptualize access appropriately, explanations need to address who belongs in certain places, times, and contexts (Titchkosky, 2011). In addition, Titchkosky (2011) argues that procedures and measurements, bureaucratic policies, institutional practices, and processes relate to the central questions of “who belongs” and the ways particular disabled bodies are valued and devalued in social spaces (p. 30). According to Titchkosky (2011), “when disability is taken as something that basically does not belong, it allows for the management of disability as an exception” (p. 34), where disability is often understood and treated as “essentially excludable” (p. 39). Therefore, by drawing on the previous three W questions (what, when, where), I can develop an answer as to whether or not disabled students, in this framework, are seen as belonging. First, the

identification of a medical model approach to disability asserts that disabled students are devalued and seen as excludable as long as they are attached to a disabled identity.

Second, the placement of disabled students within categorically funded programs essentially “allows for the management of disability as an exception” (Titchkosky, 2011, p. 34) as evidenced by practices and procedures put in place as a result of categorical programs and budgetary constraints. Third, disabled students are seen as “essentially excludable” (Titchkosky, 2011, p. 39) when institutional barriers limit a student’s ability to access the institution in a timely and meaningful manner.

However, the answer to who belongs, while drawing on the above information, requires additional explanation. Therefore, the explanation of who belongs via institutional policy, as well as who makes those decisions, in light of scholarship on barriers imposed by ableist attitudes (Oliver, 1990; Silverstein, 2000), is necessary to explain access throughout the institution.

Title 5 (C.C.R., §56008) delineates student rights, apparently indicating how individual disabled students are valued and protected.

(a) Participation by students with disabilities in Disabled Student Programs and Services shall be entirely voluntary. (b) Receiving support services or instruction authorized under this subchapter shall not preclude a student from also participating in any other course, program or activity offered by the college.

[C.C.R., §56008(a)(b)]

As such, this section indicates that students cannot be compelled to participate in DSPS and that disabled students will not be prohibited from participating in the general campus

milieu. However, Section 56002 indicates that “a ‘student with a disability’ is a person enrolled at a community college who has a verified disability which limits one or more major life activities” (C.C.R., §56002). As such, while a student might be proffered certain protections under Section 56008, that same student cannot access those protections until they are deemed eligible by a DSPS professional as stipulated under Sections 56002 and 56006.

Furthermore, while disabled student rights are stipulated in a relatively brief manner under section 56008, the considerably lengthier section 56010 articulates disabled student obligations under the heading “Student Responsibilities.”

(a) Students receiving support services or instruction under this subchapter shall:

(1) comply with the student code of conduct adopted by the college and all other applicable statutes and regulations related to student conduct; (2) be responsible in their use of DSPS services and adhere to written service provision policies adopted by DSPS; and (3) make measurable progress toward the goals established in the student’s Student Educational Contract or, when the student is enrolled in a regular college course, meet academic standards established by the college pursuant to Subchapter 8 (commencing with Section 55750) of Chapter 6 of this Division.

(b) A district may adopt a written policy providing for the suspension or termination of DSPS services where a student fails to comply with subdivisions (a)(2) or (a)(3) of this section. Such policies shall provide for written notice to the student prior to the suspension or termination and shall afford the student an

opportunity to appeal the decision. Each student shall be given a copy of this policy upon first applying for services [C.C.R., §56010(a)(b)].

While numerous sections, heretofore indicated, delineate specific powers and authority granted to DSPS professionals, it would appear that section 56010 would be reserved for the sole purpose of identification and delineation of powers reserved for students.

However, the details of section 56010 do not indicate or enumerate any student powers, rather they identify student responsibilities in conjunction with further institutional powers.

Conclusion

Following a review of CCC disability policy as identified in Title 5(5 C.C.R., § 56000-56076) as well as procedures and practices identified within CCC commissioned reports, this chapter explains access within CCC by using Titchkosky's (2011) 4W framework. As such, access for disabled students within this framework is a means that allows for the researcher to explain how a disabled student perceives, understands, and orients to social spaces within an institutional environment through the identification of institutional policy that addresses the four questions related to how a disabled student navigates the social space of the institution (Titchkosky, 2011). Therefore, through the 4W framework, disabled students within CCC are defined according to a medical model focused on deficits and placed, at least bureaucratically, in segregated or categorical programs, which affects procedures and funding capabilities. Moreover, the resulting institutional policies and practices limit the disabled student's ability to access services and accommodations in a timely manner, and is thus impeded by a variety of institutional

barriers. Finally, a disabled student's ability to access the institution is shaped by the social dynamic that places power in the hands of professionals while simultaneously disempowering students via policies developed consistent with a medical model. In the next section, this investigation will examine how the above explanation of access, via CCC disability-specific policies, interacts with non-disability specific CCC policies within a larger discourse on opportunity for disabled students.

Capability and Opportunity

Following this first level of analysis, for the second level, I again reviewed the data in order to determine how the two previous levels provide information that aids in explaining what Gee (2014) refers to as the capital "D" discourse within the California Community College (CCC) as it relates to disabled students and opportunity (Anfara, Brown, & Mangione, 2002). These opportunities were analyzed consistent with the normative framework of the Capabilities Approach, particularly the concept of essential freedoms as put forth by Sen (1992, 1999) and Nussbaum (2000, 2006) [see also Robeyns, 2003, 2011]. Birkland (2011) asserts that the actual act of identifying a problem is as much a normative judgment, emerging from social and cultural constructs, as it is an objective statement of fact. Therefore, if analysis proceeds from the identification of a problem, and the problem is identified normatively, then, the use of a normative framework such as the Capabilities Approach results in analysis that is itself normative, or at least incapable of holding onto a veneer of impartiality.

This level of analysis, again, examined definitions of disability within conventional models in order to expand the identification and explanation of social

spaces for opportunity within a Capabilities framework, as well as explain the larger discourse in which CCC policy related to disabled students occurs. Taken in total, both of these composite elements allowed for a thorough explanation of the various spaces for opportunity as well as the forces that act upon and shape those opportunities for disabled students within the institution. Several themes relevant to capability and opportunity were identified within CCC policy documents as they pertain to how CCC shapes opportunity for disabled students in comparison with other student groups. As such, opportunity, specifically the opportunity to be educated, is shaped by various policy choices made within the institution in regards to the manner in which DSPP policy is articulated. Yet, the policy scholarship asserts that policy choices are bounded by the manner in which problems, or problem groups, are defined (Dery, 1984, 2000; Rochefort & Cobb, 1994; Stone, 2002; Weick, 1995; Weis, 1989). Therefore, in order to explain the manner in which CCC policy shapes opportunity for disabled students to be educated I have identified three distinct examples of choices within Title 5 policies that serve as a means to provide a comparison between disabled students and other student groups within CCC. Furthermore, the existence of policy alternatives, as demonstrated within the comparisons, illustrates that policy makers had options when DSPP policy was crafted. Yet, these same policy makers chose to craft policies geared toward disabled students in such a way as to limit opportunities. Three specific contrasting policies from Title 5 serve to illustrate these explanations: the contrast between DSPP and tutoring services, the contrast between DSPP and EOPS, and the contrast between DSPP and Student Success Supports and Programs (SSSP). Therefore, what follows is an explanation of

opportunities, or lack thereof, for disabled students under Title 5 policy as seen in contrast with opportunities for other students within the three identified contrasts.

First, policy makers fail to create a policy environment that addresses differences in conversion factors for disabled students yet addresses this issue within the general population. As such, CCC has chosen to limit opportunities for disabled students rather than expand opportunities. This choice is illustrated in a comparison between disability services and tutoring services, specifically the manner in which referrals for students are made and the supports that accompany those referrals, or initial access, to services.

Second, policy makers chose control over disabled students in lieu of cooperation. Title 5 policies shift power and control away from disabled students and towards the designated professionals within a college; such issues of dominance are inconsistent with the essential freedoms identified within the Capabilities Approach (Nussbaum, 2000, 2006). The choice of control over cooperation is demonstrated through a comparison of how individual student and institutional roles are represented within policies central to the Extended Opportunities Programs and Services (EOPS) and those related to DSPS and disabled students, particularly in the manner that student roles and responsibilities are delineated within program policies. Third, CCC policy creates institutional metrics and supports for general student outcomes (e.g., completion, transfer), yet, consistent with a medical model view of disability, individualizes those same supports for disabled students. The choice to focus on individual deficits as opposed to institutional responsibility and support is demonstrated through a comparison between DSPS policy and policy generated as part of CCC student success (5 C.C.R. § 51024) efforts. This

comparison is highlighted by demonstrating the language utilized within newly adapted Student Success and Support Programs (SSSP) policies that promote a series of institutional actions and responsibilities in contrast to DSPP policy which promotes individual deficits and individualized behaviors.

Narrow opportunities over expansive opportunities

Under the Capabilities Approach, each individual has a different capacity to turn resources into opportunities, also referred to as a “conversion factor” (Robeyns, 2003, 2011; Sen, 1992, 1995). In other words, due to various environmental, social, historical, and biological factors, one individual may have more ability to take advantage of particular institutional resources than another (Riddle, 2014; Robeyns, 2011). Title 5 asserts that the purpose of DSPP policy is “directly related to the students' participation in the educational process” and that DSPP programs and services should “promote the maximum independence and integration of students with disabilities” [5 C.C.R., § 56000 (c) (d)]. However, the inability of CCC policy to take into account disparities in “conversion factors” (Riddle, 2014; Robeyns, 2011) leads to discrepancies in students’ opportunities to be educated within CCC, particularly when policies directed at disabled students are compared to those that address general students, or targeted non-DSPP student populations.

According to Title 5, a “student with a disability” is a person enrolled at a community college who has a verified disability, which limits one or more major life activities (5 C.C.R., § 56002). That a physical and/or mental impairment might limit a life activity indicates that it would also limit a student’s ability to convert resources

(Riddle, 2014). The verification of an individual's disability is approved by the Disabled Students Programs and Services (DSPS) at the local college. However, according to sections 56002 and 56008, the entire process cannot begin until the student enrolls in the college, a process the student must carry out outside the support of DSPS (5 C.C.R., § 56002). Furthermore, the student must self-refer, an act of self-advocacy that can pose a considerable obstacle to individuals with disabilities (5 C.C.R., § 56008a), due to the social stigma, personal anxiety, and cognitive limitations that often accompany disabled students (Ashmore & Kasnitz, 2014). Therefore, both the enrollment requirement as well as the need for self-referral narrow access to resources as well as impose limitations on how well those resources are converted into opportunity. In contrast, several services offered within the CCC address a student's potential conversion factor by mitigating obstacles to those same services, therefore expanding opportunities for students. Two examples demonstrate this condition: first, policies related to implementation of tutoring services within CCC; second, policies that delineate the referral process for tutoring.

Tutoring is a service identified by scholars as a positive academic support for post-secondary students identified with disabilities, as well as for those not yet labeled with disabilities (Allsopp, 1997; Fuchs, Fuchs, & Kazdan, 1999; Gimblett, 2000; Stenhoff & Lignugaris, 2007). Consistent with this, tutoring is also identified and outlined within Title 5 as a service available to all students, regardless of ability or program status (5 C.C.R., § 58170). However, this service, available to all students, is presented differently than services targeted directly at disabled students within Title 5. The first noticeable difference is the relationship dynamic between the student who is

served and those who provide the service. As opposed to DSPS service provision, which is provided through professionals, tutoring is completed by fellow students, or a “student tutor.” This difference stands as a contrast to the medical model in which only certificated professionals are able to provide chosen services to disabled students. Section 58168 of Title 5 specifies this difference.

Tutoring, when provided by the college, shall be considered a method of instruction that involves a student tutor who has been successful in a particular subject or discipline, or who has demonstrated a particular skill, and who has received specific training in tutoring methods and who assists one or more students in need of special supplemental instruction in the subject or skill. (5 C.C.R., § 58168)

A second difference between DSPS services and tutoring services is the referral process to tutoring. DSPS requires a disabled student to complete the difficult task of self-identification and self-referral, while making no provision within DSPS policy for institutional referral or support in the referral process. However, section 58170 provides a means for the institution (in the person of staff and/or faculty) to recognize student need and make an appropriate referral to a specific service, in this case tutoring. “Students enroll in the Supervised Tutoring course, through registration procedures established pursuant to section 58108, after referral by a counselor or an instructor on the basis of an identified learning need” (5 C.C.R., § 58170). This is a task that large numbers of disabled, as well as non-disabled, students may not be able to locate or accomplish on their own. The need for this stipulation is reinforced by the addition of the phrase “No

registration procedure shall be used that results in restricting enrollment to a specialized clientele” (CCCCO, 2006, p. 10), which addresses potential procedural and institutional barriers that specialized groups (e.g., disabled students) might encounter in their attempts to access this educational opportunity. In this way, the Title 5 policies that address tutoring (5 C.C.R., § 58168 & 58170) allow for individuals with varying abilities, and conversion factors, to access similar opportunities (e.g., tutoring support). Furthermore, in the CCC Supplemental Learning Assistance and Tutoring Regulations and Guidelines the CCC Chancellor’s Office officially clarifies this process.

A counselor or an instructor, on the basis of an identified learning need, must refer all students seeking tutoring. Students cannot refer themselves for tutoring. Tutees must enroll in a noncredit Supervised Tutoring course carrying the Taxonomy of Programs number 4930.09. To enroll, students must follow normal registration procedures consistent with Title 5, section 58108. No registration procedure shall be used that results in restricting enrollment to a specialized clientele (CCCCO, 2006, p. 10)

As such, this provision allows for a student to request a referral and also enables the institutional actors to connect students to appropriate resources. This particular policy, again, stands in contrast to the manner in which DSPS policies fail to support students with varying conversion factors in their efforts to access opportunities (e.g., DSPS services) through the placement of complete responsibility squarely on the disabled students.

Control over cooperation

The manner in which institutional actors interact with students or enter into service agreements with various students and student groups provides another example of choices made by policy makers within Title 5. The decision, as evidenced by CCC policy, by the institution to choose control of disabled students over cooperation is exemplified in the comparison of DSPS policies with that of EOPS. According to the California Community Chancellor's Office website, EOPS is a program that serves students disadvantaged by various societal and environmental factors.

The EOPS program's primary goal is to encourage the enrollment, retention and transfer of students handicapped by language, social, economic and educational disadvantages, and to facilitate the successful completion of their goals and objectives in college. EOPS offers academic and support counseling, financial aid and other support services. (CCCCO, 2008)

While not funded according to weighted-student counts based on individual student characteristics, EOPS does utilize categorical funding outside of the general institutional budgets. Furthermore, both EOPS and DSPS serve students labeled within the literature as highly nontraditional, thus allowing for a reasonable comparison (Levin, 2014).

It is not within the scope or purpose of this investigation to focus solely on all of the similarities and differences between the two programs. However, the ways in which each program addresses student roles, particularly in regards to student rights and responsibilities, contrast with the manner in which CCC policy limits students to roles of subjects or creates opportunities for students to engage in mutual partnerships. As such,

the manner in which EOPS interacts with and includes students in a participatory process will be detailed and explained in regards to DSPS in order to demonstrate and explain the contrast.

As Title 5 details the policies and provision related to DSPS, it also does so regarding EOPS. Of particular note in this investigation are the student responsibilities stipulated in Section 56222 of Title 5, which delineates the specific roles and responsibilities for both the institutional agent (EOPS program) and the EOPS student.

(a) The EOPS student agrees to meet with a counselor to establish an educational goal and to develop an Education Plan. (b) The EOPS student agrees to adhere to the Education Plan and the Mutual Responsibility Contract. (c) The student agrees to make academic progress toward an education goal. (d) The student agrees to meet with EOPS staff, e.g., the EOPS Counselor, the Director, Para-professional or peer- advisors in order to comply with the program standards, including but not limited to the three (3) mandatory counseling and advising contact sessions per term. (e) The student agrees to provide income documentation as required by local financial aid verification policy, within two (2) months of acceptance into the EOPS Program if the student is to receive an EOPS grant or work-study. (f) The EOPS program agrees to provide support services to assist the EOPS students in meeting their educational goals (i.e. counseling, tutoring, priority registration, books, orientation, transportation, meal, referral, transfer assistance). (g) The Mutual Responsibility Contract should include a date of acceptance into the

EOPS Program and a place for both EOPS staff and student to sign. (5 C.C.R. § 56222)

According to the implementation guidelines developed by the Chancellor's Office, the Mutual Responsibility Contract (MRC) is a binding document in which both parties, the EOPS program and the student, must agree to the terms and conditions of the contract" (CCCCO, 2008, p. 22) As such, the intent of the MRC is to provide written evidence as to the level of commitment of both the student and the institutional agent toward the achievement of the student's educational goals (CCCCO, 2008, p. 22).

While both programs, EOPS and DSPS, have similarities (i. e., the use of categorical funding and the enrollment of highly nontraditional students), they diverge in the manner in which they provide for an individual's opportunity to be educated. According to Title 5, each student served under DSPS is required to have an academic accommodation plan (AAP), which serves as a record of "the interactive process between each DSPS student and a DSPS certificated staff member" in regards to academic accommodations and services "resulting from the student's disabilities" (5 C.C.R. § 56022). This is similar to language used within EOPS (5 C.C.R. § 56222) to describe the "Mutual" responsibilities both the program and the student share in the service process. Yet, at this point in the text or policy, the similarities in language and approach to students diverge. What follows are explanations of the language used within Title 5 to explain rights and responsibilities of students under both EOPS and DSPS.

Compliance. In the DSPS related sections of Title 5, disabled students are informed that they must "comply with the student code of conduct" (5 C.C.R. § 56010a1)

that each individual institution maintains either formally or informally. This provision does not allow for behavioral issues that arise from physiological impairments, nor does it address a disabled student's limited ability to take advantage of behavioral supports in order for an individual to modify behaviors so that they are consistent with institutional norms—norms established by the institution without the participation of disabled students. Furthermore, this appeal to the institutional code of conduct, as well as subsequent examples, demonstrates the institution's tendency to employ language that is intended to keep disabled students in line, as it were. In contrast, EOPS regulations make no reference to any institutional student code of conduct.

Progress. Section 56010 states that disabled students are required to “make measurable progress toward the goals established for the course” (5 C.C.R. § 56010a3). According to the provision, DSPS certificated staff are the ones who determine progress. As such, students are again without the power to identify their own goals or determine whether or not they have made progress as opposed to “measurable progress.” Once again, this specific provision demonstrates an imposed approach from the designated professionals to service for disabled students within the institution.

DSPS policies further burden disabled students through the requirement that they conform to standards for all students. Disabled students are expected to “meet academic standards established by the college” (5 C.C.R. § 56010a4). In this matter, EOPS regulations offer a telling contrast. While EOPS students are expected to work toward goals, the nature of the goals and the establishment of those goals are markedly different within the EOPS regulations from those within DSPS. In order to establish goals, EOPS

students are required to meet with EOPS counselors (5 C.C.R. § 56222). This provision is similar to DSPS; however, whereas certificated staff under DSPS monitor the student's progress and determine if measureable progress has been made, under EOPS regulations students "agree" to "make academic progress toward an educational goal" (5 C.C.R. § 56222c). There is no indication that the goal must meet certain stipulations, only that it must be an academic goal. Furthermore, progress is also not stipulated. As such, the language allows for an interpretation of progress to be made in collaboration between the EOPS student and the institution. This approach for EOPS suggests a more equitable plan than DSPS', with equal contributions from both students and institutional actors.

Furthermore, DSPS requires that a "certificated staff" monitor student progress, thus perpetuating a medical model in which quasi-experts can exert control over disabled students. Because not all individuals employed in a DSPS office are certificated, this situation restricts options for students and places limited power in the hands of a handful of specialized professionals within the institutions. In contrast, EOPS states that an EOPS student can meet with any EOPS staff including EOPS counselors, directors, para-professionals, and student workers "in order to comply with the program standards" (5 C.C.R. § 56222d). The wording in the regulations allows EOPS students a greater degree of freedom with whom they are allowed to meet, including non-certificated employees as well as student workers. Therefore, the potential difference between the student's standing in the institution when compared to the institutional actor's standing is minimized in comparison with the same differences DSPS students encounter.

Responsibility and Partnership. DSPTS policy stipulates that disabled students must adhere to all program policies adopted by DSPTS in order to remain eligible for services (5 C.C.R. § 56010a2). This provision places the power completely on the side of the DSPTS program as the creator and adopter of student-specific policies. There is no place in DSPTS policy for waivers, exceptions, or even appeals regarding specific DSPTS policy. As such, disabled students are given the choice of no services (a violation of federal disability law) or agree to policies created and enacted by others, again, without the participation of disabled students.

While the language used within EOPS policies, as articulated within Title 5, is initially similar to DSPTS, the subsequent language provides greater equanimity than DSPTS. For instance, EOPS does stipulate that an EOPS student must “agree to adhere to the Educational Plan” (5 C.C.R. § 56222b), yet the policy previously indicated that the development of the program plan was one of mutual partnership. Furthermore, whereas the DSPTS policies provide explicit provisions for how the institution can terminate services (5 C.C.R. § 56010), the EOPS policies further indicate a mutual responsibility by stating that the EOPS program “agrees to provide support services to assist the EOPS students in meeting their educational goals” (5 C.C.R. § 56222f).

Taken in total, the guidelines and provisions of EOPS policy demonstrate a language of shared responsibility and mutual partnership wherein students are seen as key actors in their own educational outcomes. However, DSPTS policy demonstrates, continually, a language of marginalization and low expectations (on the part of students as well as the institution), and is coupled with language that serves to exert control over

students by excluding, or limiting, student involvement in charting their own educational paths within the institution.

Individual deficits over institutional supports

The Capability Approach argues that equality and social arrangements should be evaluated in the space of the essential, or actual, opportunities people have to achieve the valued activities and ends that are integral to their well-being (Terzi, 2005). As such, both the ability of an individual to convert specific resources and the social or political designs which promote access contribute to authentic opportunities (Riddle, 2014; Robeyns, 2011). Therefore, policies that fail to account for the socio-political arrangements and/or supports, and instead choose to focus solely on individual deficits, through this lens, is antithetical to opportunity under a Capabilities Approach framework. The implementation of SB 1456 (Lowenthal) provides a salient example to explain this. The following section, then, will first describe and explain elements of SB 1456, also referred to as the *Student Success Act of 2012*, as enacted within Title 5 of California Code of Regulations, as they relate to institutional arrangements and supports. Next, a contrast between the above mentioned elements and those policies specific to DSPPS will be identified and explained within a Capabilities Approach framework.

In 2012, the California legislature passed SB 1456, referred to as *The Seymour-Campbell Student Success Act of 2012* (Lowenthal). The purpose of SB 1456 was to improve the educational outcomes of CCC students. Signed into law in September of 2012 by Governor Brown, *The Seymour-Campbell Student Success Act of 2012* revised and reimagined the existing *Seymour-Campbell Matriculation Act of 1986*. According to

the legislative counsel's digest of SB1456 (Lowenthal), under the previous, 1986, authorization of the Seymour-Campbell Matriculation Act, matriculation was a process focused solely on enrollment and placement (SB 1456, Legislative Counsel's Digest, 2012). Specifically, matriculation, under the Matriculation Act of 1986 was defined as a process that facilitated the enrollment and class selection for students so that students could achieve their intended educational outcomes.

Matriculation is defined as a process that brings a college and a student who enrolls for credit into an agreement for the purpose of realizing the student's educational objectives. The act specifies the matriculation services that community colleges are required to provide, including the processing of the application for admission, orientation and preorientation services, assessment and counseling upon enrollment, and postenrollment evaluation of a student's progress [SB 1456, Legislative Counsel's Digest (2), 2012]

The drafters of *Student Success Act of 2012* acknowledged the need for existing matriculation policies. However, as codified in Title 5 (Section 55500), matriculation program policies were renamed Student Success and Support Programs (SSSP) as an effort to reflect a focus on promoting services and supports designed to increase preferred educational outcomes, rather than placement and enrollment alone (5 C.C.R. § 55500a).

The purpose of this subchapter is to implement the Student Success and Support Program to increase California community college student access and success through the provision of core matriculation services, including orientation, assessment and placement, counseling, advising, and other education planning

services, with the goal of providing students with the support services necessary to assist them in achieving their education goal and identified course of study (5 C.C.R. § 55500a).

Eschewing a medical model of students focused primarily on student deficits or inadequacies, the CCC utilized language within SSSP policy that opportunity to be educated, as institutionally defined, is the responsibility of both the individual as well as the institution. According section 55500 of Title 5, the CCC “recognizes that student success is the responsibility of the institution and student, supported by well-coordinated and evidence based student and instructional services to foster academic success” (5 C.C.R. § 55500a). This approach is in keeping with Capability Approach theorists who posit that opportunity for preferred outcomes must take into account both the attributes of the individual as well as the design of the institutional space in which individuals act (Riddle, 2014; Robeyns, 2003, 2011; Sen, 1992, 1995). Furthermore, this approach is consistent with an intersectional model of disability which accounts, as well, for both individual characteristics as well as environmental barriers (Shakespeare, 2006). Yet, the balanced language of SSSP within Title 5, with student responsibilities on the one hand and institutional responsibilities on the other, stands in contrast to the predominant deficit-driven language

Moreover, the language used throughout the section titled “Counseling Advising, and Other Education Planning Services” (5 C.C.R. § 55523) promotes student interests, choice, and self-direction, albeit with the support and counseling from institutional professionals. As such, the policy language requires the institutions to put the student’s

choices, goals, and aspirations front and center. Furthermore, the institution must not only make the student's choices, goals, and aspirations central within the process, but must also provide the information and supports necessary to accomplish these.

(a) Counseling, advising, and other education planning services shall include, but are not necessarily limited to, the following: (1) Assistance to students in the exploration of education and career interests and aptitudes and identification of an education and career goal and course of study, including, but not limited to, preparation for transfer, associate degrees, and career technical education certificates and licenses. (2) The provision of information, guided by sound counseling principles and practices, using a broad array of delivery, including technology-based strategies, to serve a continuum of student needs and abilities to enable students to make informed choices. (3) Development of an education plan to accomplish a course of study related to a student's education and career goals.

(5 C.C.R. § 55523a)

The choice of policymakers to allow SSSP policies to be driven by student interest and goals, rather than deficit-driven as in DSPS policy, is a key distinction. However, SSSP policies go further by requiring that institutions reach out to students before a student's struggles result in separation from the institution. Furthermore, part C of Section 55523 speaks explicitly of ensuring student opportunity as part of the institutional responsibilities.

(c) Colleges are required to notify students who are at risk of losing Board of Governors Fee Waiver eligibility due to being placed on academic or progress

probation for two consecutive terms. Pursuant to section 58108, colleges are required to notify students who are at risk of losing enrollment priority due to being placed on academic or progress probation or due to exceeding a unit limit. Colleges shall ensure that, within a reasonable time of receiving such notice, students shall have the opportunity to receive appropriate counseling, advising, or other education planning services in order to provide students with an opportunity to maintain fee waiver eligibility and enrollment priority (5 C.C.R. § 55523c).

Sections 55510 and 55524 (5 C.C.R. § 55510, 55524) address the development of student educational plans as well as the supports provided by the institution. Each of these sections within the SSSP policies continues to demonstrate the choice by the CCC to place responsibility on the student for their educational outcomes, and continues to place a responsibility on the institution as well so that students are able to achieve preferred outcomes. However, section 55525 (5 C.C.R. § 55525) shifts the balance of responsibility further onto that of the institution. While DSPS policy requires that students bear the responsibility of routine follow-up in order to maintain eligibility, SSSP policy requires the institution to conduct student follow-up and ensure that opportunities for students are not only created but also maintained.

Each college shall evaluate the academic progress of, and provide support services to, at risk students. The college shall monitor the academic progress of each student to detect early signs of academic difficulty and provide students with advice or referral to specialized services or curriculum offerings where necessary pursuant to section 55523. (5 C.C.R. § 55525)

The language of section 55525 related to ongoing evaluation and support stands in contrast to the language in DSPS, which serves to negate opportunity by placing the onus for follow-up and support squarely on the shoulders of students who might be less skilled at converting opportunities than their peers (Riddle, 2014).

Both DSPS and SSSP policies define student responsibilities under the auspices of the specific programs. However, DSPS defines student responsibilities (5 C.C.R. § 56010) as an onerous self-directed task, and failure to meet the institutionally defined responsibilities leads to program termination. SSSP, in some distinction, couples student responsibilities (5 C.C.R. § 55530) with those of the institution (5 C.C.R. § 55531) and provides detailed information throughout the program policies on ways in which to curtail program and institutional separation.

Herein lies the larger distinction between these two sets of policies both housed within CCC Title 5 code of regulations. SSSP policies do not abrogate student responsibilities in favor of institutional supports. Rather, consistent with central tenets of the Capabilities Approach, SSSP policies recognize differing needs of students and therefore couple student responsibilities with ongoing institutional supports in order to provide opportunity for the achievement of preferred outcomes within the social space of the institution. In contrast, DSPS policy reinforces, continually, a deficit view of students while providing a minimum, as required by law, of institutional support. Support, as defined in DSPS policy, is in constant danger of revocation due to students not fulfilling their part of a one-sided policy structure.

Conclusions

Through a series of policy choices implemented by the CCC, which limit the capacity for disabled students to access education within California's community college system, disabled students within the institution experience diminished access as well as diminished opportunity to be educated. These policy choices are exemplified by the choices of the institutional policy makers to employ language, in regards to disability-specific policies, of limited choice and opportunities rather than expansive options. Moreover, CCC made choices, in regards to disabled students, for control of and domination over disabled students rather than cooperation and partnership. Furthermore, language within Title 5 demonstrates a continued focus on individual deficits and responsibility rather than institutional supports. The existence within Title 5 policies of more student-centered, non-deficit-driven, policies as they relate to Tutoring, Learning Assistance, EOPS, and SSSP indicates that policy makers were not so much constrained by practical and/or legal realities, but rather by ideological constructs specific to disabled students (see Dery, 1984, 2000; Rochefort & Cobb, 1994; Stone, 2002; Weick, 1995; Weis, 1989). Therefore, the lack of access and opportunity of disabled students as evidenced within CCC policy is the logical conclusion for taken-for-granted notions (Oliver, 1990) held by CCC policy makers with regards to the assumed ability, capacity, and place within a social milieu of disabled students.

Chapter 6: Conclusion

The purpose of this current investigation was threefold. First, since the Capabilities Approach (Robeyns, 2011; Sen, 1999) as well as the prevailing cultural, social, and minority models of disabilities (Ashmore & Kasnitz, 2014; Hahn, 1994, 1997; Oliver & Barnes, 2012) all place issues of access for disabled persons within the policies and structures of institutions, society, and the culture at large, this investigation sought to explain disability policy within broader social institutions through an examination of disability-specific policies as written in California's education code and implemented within California Community College (CCC) system. Second, this investigation sought to explain the ways in which policy design in CCC shapes educational opportunities, as well as barriers to opportunities, for students with disabilities. Third, this investigation sought to explain the ways and extent to which policies and political discourses in CCC legitimate power relationships between disabled students and the CCC, specifically in regard to disabled students' access to educational opportunities within CCC.

The first five chapters of this investigation offered an introduction to the problem surrounding opportunity for disabled students in community colleges, a review of the literature surrounding access, disability policy and policy development, a review of the conceptual framework utilized for analysis, the methodological design that was utilized for this study, and findings from within CCC policy. This current chapter serves as a conclusion to the overall project. Specifically, this chapter will include answers, supported within the findings, to the research questions, as well as the implications, for both research and practice, of this investigation.

Response to Research Questions

The following research questions guided this investigation: In what ways do CCC policy, structures, and practices shape educational opportunities for disabled students? How do institutional policies and structures reflect power relations within the CCC? How do these policies and structures reflect existing discourses relative to individuals with disabilities in higher education and the society at large? In what ways do ideological constructs shape policies of access in CCC? Does the placement of Disabled Student Programs and Services (DSPS) in categorical programming shape access for disabled students? If, so how?

Through the use of the analytical and conceptual lenses of access and opportunity as described in chapter four of this investigation, I identified the following in response to the aforementioned research questions. In general, CCC policy, structures, and practices restrict educational opportunities for disabled students by perpetrating a deficit view of disabled students which, consequently, vest professionals with decision-making authority while simultaneously exclude disabled students from the decision making process. Disabled students are excluded through the constraints of potential options by the articulation of disability-specific policies, particularly the placement of disabled students outside generally funded programs within the institution. This approach to disabled students is consistent with a larger discourse of disability-as-deficit as viewed within educational and sociological scholarship.

However, this response requires a more nuanced and delineated explanation based upon specific findings. As such, I identified four salient findings which led to the

formation of the previous response. First, consistent with a Medical Model of Disability, CCC policies perpetuate an ideological approach to disabled students which preferences professional viewpoints at the expense of disabled students. Second, this ideological construct of disability individualizes and segregates disabled students rather than provides institutional support and integration. Third, disabled students experience constraints upon their ability to access the socio-political spaces of the institution as a result of DSPS specific policies. Fourth, in keeping with a deficit-driven approach to disability as well, disabled student experience a limitation on individual, as well as programmatic, options thus limiting individual opportunity. These findings of a deficit-driven funding and eligibility model, an individualized approach to intervention constrained access, and limited options for disabled students are explained in greater detail below.

CCC policies espouse a deficit-driven model of disability

Evidence of a deficit-driven model consistent with pathological, or Medical Model, approach to disability was identified throughout the specific policies. However, this deficit-driven approach to disabled students was noted most prevalently in two areas within the policies: the weighted student count (WSC) funding model for disabled students and the emphasis on professional experts authorized to label and place disabled students in segregated, or categorical, programs.

Section 56064 of California's Code of Regulation allows the CCC to develop a funding model to offset excess service costs (5 C.C.R., § 56064). The WSC funding model developed by the CCC and described in various state commissioned reports

(Galvin Group, 2000; 2012; 2013; MPR Associates, 2012) is tied inexorably to individual student deficits rather than to actual services or supports needed to fulfill legal mandates. The determination of funding based on student deficits rather than evidenced need is consistent with a medical, or pathological, approach to disability in which disabled students are seen as lacking or in need of amelioration (Aune, 2000; Oliver, 1990; Mitra, 2006; Pfeiffer, 2001; Smart & Smart, 2006).

Furthermore, Title 5 Disabled Student Programs and Services (DSPS) policies (5 C.C.R., § 56000-56076) under the 4W framework demonstrate that the definition of disability as utilized within Title 5 (5 C.C.R., §56002 and 56032-56044) as well as the method of determination of eligibility (5 C.C.R., §56006) is consistent with a Medical Model approach to disability. This approach, wherein the individual is lacking of or deficient in a property or ability, yet an approach which also emphasizes the need for experts to identify said deficits, determines the best method and placement for the amelioration of those deficits (Aune, 2000; Mitra, 2006; Oliver & Barnes, 2012; Strange, 2000).

CCC policies emphasize individualization and segregation

For disabled students in California's community colleges, the Medical Model of Disability, as a construct, individualizes and segregates disabled students rather than provides or speaks to the provision of institutional support and integration. This is evident in disability-specific policies and also in comparison with other programs within the CCC, such as tutoring and student success supports and programs (SSSP).

DSPS policies individualize disability in two distinct ways. First, DSPS policies attach program funding to individual student deficits, rather than local program needs. Second, the emphasis on specific diagnostic labels within DSPS policy used to determine eligibility as well as develop individualized accommodation plans speaks to the individualization of disabled students within the institution (5 C.C.R., §56002, 56022 & 56032-56044).

In comparison with other institutional programs where responsibility for the acquisition and provision of supports and services is shared mutually by both the student and the institutional actors, the individualized nature of DSPS policies becomes more apparent. In contrast to DSPS services, which are provided through professionals, tutoring is carried out by fellow students, or a “student tutor” (5 C.C.R., §58168). This difference stands as a contrast to the Medical Model in which only certificated professionals are able to provide chosen services to disabled students. Yet, the most salient difference between DSPS services and tutoring services is the referral process to tutoring. DSPS requires a disabled student to complete the difficult task of self-identification and self-referral individually. Tutoring, in contrast, provides a means for the institution (in the person of staff and/or faculty) to recognize student need and make an appropriate referral to a specific service, in this case tutoring (5 C.C.R., §58170).

The counterweight to an individualized and segregated approach to policy, as in the case of DSPS policy, are policies that provide an institutional approach in an integrated environment. SSSP policies require that institutions reach out to students, before a student’s struggles result in separation from the institution, through the

institutionalization of supports and the integration of supports programs (5 C.C.R., §55523). Therefore, the institutional support is designed to keep students integrated within the institution, in contrast to DSPS policy, which emphasizes opportunities for termination of institutional obligations and supports (5 C.C.R., §56010).

CCC policies act as a constraint upon access for disabled students

The U. S. Office of Civil Rights defines accessibility as equality of actions and services. “Accessible means that individuals with disabilities are able to independently acquire the same information, engage in the same interactions, and enjoy the same services within the same timeframe as individuals without disabilities, with substantially equivalent ease of use” (OCR Reference No. 10122118, p. 1). Yet, several specific policies within Title 5 demonstrate constraints on access for disabled students. Under the 4W conceptual framework, policies that addressed Who, Where, and When questions reflected constraints upon student access. Moreover, Extended Opportunities Programs and Services (EOPS) policies reviewed under the Capabilities Approach framework also demonstrate, via comparison, the constraints placed on disabled students’ abilities to access their institution.

Title 5 DSPS policies under the 4W framework demonstrate that eligibility requirements that designate “who” is authorized to approve access services act as a constraint upon access (5 C.C.R., § 56006). Furthermore, a funding model that places DSPS budgets outside of the general operational budgets of the institution (MPR Associates, 2012) places constraints on access by answering the question of “where” disability is placed through the segregation, at least programmatically and budgetarily, of

disabled students. Finally, the definition of disability (5 C.C.R., § 56002) as well as the process for the determination of eligibility (5 C.C.R., § 56006) imposes barriers to access by delaying “when” students receive services, supports, and accommodations.

From the Capabilities Approach framework, there is a stark contrast between DSPS policies and EOPS policies as written within Title 5. EOPS policy allows for greater access through increased opportunities for individual decision making within the institutional space than is allowed within DSPS policy (cf 5 C.C.R. § 56010 & 5 C.C.R. § 56222). While DSPS students are restricted through the top-down professional approach to student-institutional agreements (including imposed goals and certificated gatekeepers), EOPS students are not restricted in the same way. In fact, EOPS students are able to access the social space more readily through collaborative agreements. Furthermore, EOPS students are able to navigate the political space through policies that have been designed to increase student-driven outcomes through the available institutional supports more readily than DSPS students (5 C.C.R. § 56010 & 5 C.C.R. § 56222).

CCC policies limit options and opportunities for disabled students

The Capabilities Approach, as a theoretical framework, is premised on the idea that individual opportunities, and the space in which these opportunities exist, are necessary for the existence of just policy (Riddle, 2014; Robeyns, 2013). As such, policies that display evidence of limiting individuals (students and/or colleges), under a Capabilities Approach framework, are inconsistent with just policies. Yet, Title 5 policies consistently demonstrate a constraint of options, either on a campus level or on

an individual student level. The presence of categorical funding within DSPS budgets and the contrast between tutoring policy and DSPS policy in Title 5 are two examples of this.

As DSPS budgets were reduced, by as much as over 40%, following the 2008 recession, CCC commissioned reports indicated that individual DSPS departments altered the manner in which services were provided to disabled students (Galvin Group, 2013; MPR Associates, 2012). Because budgets were heavily predicated on categorical funding, individual college DSPS departments fell out of compliance with federal mandates relative to services and accommodations. Furthermore, a comparison between City College of San Francisco and Palo Verde College supports the claim that individual colleges are unable to make program or student adjustments in order to support opportunity (CCSF, 2013; Galvin Group, 2013; Palo Verde College, 2011).

Under the Capabilities Approach framework, students with varying needs, resources, and abilities are accounted for under the concept of “conversion factor” (Riddle, 2014). As such, policies that account for individual conversion factors while simultaneously limiting the constraints upon student options are consistent with opportunity under the Capabilities Approach framework. Yet, DSPS policy, through various requirements (e.g., student self-referral process, verification by certificated staff), imposes constraints on options while failing to support discrepancies in individual conversion factors. Title 5 policies that address tutoring (5 C.C.R., § 58168 & 58170), however, allow for individuals with varying abilities and conversion factors to access similar opportunities (e.g., tutoring support) compared to any other student group.

Therefore, not only are DSPS policies inconsistent with opportunity under this approach but also CCC policies related to Tutoring demonstrate that policies exist within Title 5 that support opportunity. Yet, these policies are not available to disabled students.

Access and Opportunity

Using the access framework, I examined policy consistent with Titchkosky's (2011) understanding of access as more than a single act of inclusion or participation. Rather, access is a way of perceiving, understanding, and orienting to social spaces within an institutional environment (Titchkosky, 2011). As such, CCC policy documents perceive and understand disabled students on the basis of their deficits. Therefore, the orientation towards disabled students by the CCC is one of pathology, diagnosis, and segregation; yet, the documents present a claim that they work toward access and inclusion for disabled students. These dual discourses are not compatible. CCC policy defines what disability is in terms of loss, deficit, and dysfunction, locates where disability services are found in categorical funding and specialized structures, decides when services and supports can be implemented apart from the student, and assigns who is authorized to verify by means of certification and power disparities. These definitions are not aligned with claims of access and inclusion.

The historical approach to disability as a form of deficiency, or defect, is evident in CCC policy (Mitra, 2006; Pfeiffer, 2001). Furthermore, the idea that disability is an individual experience that must then be individually ameliorated or accommodated is present as well (Oliver, 1990; Smart & Smart, 2006). The nature of the deficit model contributes to barriers that exclude disabled people from integration into the general

social milieu because the response to disability, under this model, is ameliorative (McKenzie, 2015; Silvers, Wasserman, & Mahowald, 1998). This leads to CCC policy that supports rectification and amelioration of disability through an authorized (e.g., certificated) elite who provides the means to return disabled students to a semblance of “normalcy” as defined by those same in power (Aune, 2000, p. 55). The consequence of this view, as seen in CCC policy, is that a failure to return the student to the expectations imposed by the elite results in the student’s departure from the institution or in complete segregation from the general college community. Both outcomes are inconsistent with access, as defined in this investigation, or Opportunities, as utilized within the Capabilities Approach.

Therefore the manner in which CCC labels disability carries a negative connotation because the disabled person is considered unable to fulfill standardized norms (Fook, 2000). This connotation connects the person to the label and does not conceptualize an autonomous individual. Thus, the result is further isolation for the disabled student from the general educational environment (Fook, 2000). Furthermore, exclusion of disabled individuals from education, among other opportunities, is a consequence of the injustices, which develop as a result of ableism under the deficit approach to disability (Chivers, 2009; McKenzie, 2015).

Placed within larger scholarship on disability, access, and opportunity, these findings are consistent with the dominant discourse on disability. Consistent with this scholarship, disability studies scholars have as well argued that the model of disability adopted by decision makers leads to constrained choice and inevitable policy outcomes

that lead to segregation and marginalization of disabled individuals from the dominant cultural milieu (Mitra, 2005; Oliver, 1990; Oliver, 1996; Oliver & Barnes, 2012; Wolfensberger, 1995).

As such, this investigation fits within a larger discourse on disability by identifying the labels, constraints, marginalization, and limitations imposed upon disabled students and their ability to access the institution in order to achieve intended outcomes or opportunities. Yet, this investigation accomplishes more than merely reaffirming previous scholarship on lack of access and lost opportunities. Rather, this investigation has added to the existing scholarship on access and opportunity in two distinct ways.

First, this investigation repeatedly found that stand alone support programs, while built upon a premise of increased access and opportunity for disabled students, actually curtail access by their very existence. Examples of this include the use of categorical funding for disabled students, segregated academic support, and the marginalization that occurs through the additional bureaucracy disabled students are forced to navigate as a result of “access” programs. Second, this investigation has added to a growing literature that argues that access cannot be decoupled from outcomes (Dowd, 2003; Riddle, 2014). In this investigation, I have added to this literature by placing opportunity, or the freedom to navigate the socio-political space available to disabled individuals, through a Capabilities Approach framework as an additional outcome that must be accounted for in the scholarship, particularly the scholarship on at-risk groups within the higher education literature. Thus, this investigation has addressed not only access for disabled students but

also access for all potential students and the responsibility of the community college to enact policies and practices that foster and preserve access.

Implications for Practice and Policy

There are several substantial implications for the aforementioned findings and contributions for practice and policy. The implications for practice revolve around the dual themes of access and opportunity. This is demonstrated by the need for an approach to the educational environment, including physical, curricular, and technological environments, consistent with principles of Universal Design in Learning.

According to the National Center for Universal Design in Learning (UDL), a universally designed instructional environment provides for multiple means of representation (providing diverse learning options), multiple means of expression (providing various options for learners to demonstrate what they know), and multiple means of engagement (provide different ways in which to connect with learners' interests) [CAST, 2014]. While this could entail a great many examples, the central idea of universally designed environments is that essential academic supports required for a student to access curricula on campus are provided within the general campus environment (Burgstahler, 2014; Dietrich 2014). By creating curricular, technological, and architectural policies consistent with principles of UDL, institutions can avoid the many problems associated with segregation such as program and budgetary isolation. Furthermore, policies consistent with a UDL approach minimize the need for segregated DSPTS programs that impose barriers to disabled students as well as provide a means for the integration of all students into the college environment.

Throughout this investigation, I identified a lack of flexibility as a significant problem within policies directed at disabled students. This lack of flexibility was evident in both financial policies as well as service related policies. Furthermore, the discrepancy between DSPS policies and other institutional policies highlights the lack of flexibility and choice available to disabled students as a result of institutional policies. As such, findings from this investigation indicate that institutional policies must not only account for differences in students' ability to convert resources (Riddle, 2014; Robeyns, 2003) but also provide for options for the navigation of the social space of the institution (Titchkosky, 2011). Therefore, policies that provide choice to disabled students, as are in place within CCC tutoring programs, or that provide multiple means of support, as are in place within CCC student success programs, exemplify the central tenets of both access and opportunity. Mesa College in San Diego County, California and Lassen College in Northern California provide two examples of colleges that have attempted to provide multiple means of support by providing disabled students options in accessing needed educational supports.

Mesa College provides tutoring in their Academic Skills Center, which is funded out of the general college budget. However, some students require additional time due to disability related learning needs. As such, Mesa College DSPS does not require that students attend segregated tutoring sessions. Rather, they give the student the choice of receiving the additional time in the Academic Skills Center or with a DSPS certificated staff. If the student chooses to access the Academic Skills Center, as other students do, then DSPS covers the costs of the additional tutoring time by funding the Academic

Skills Center California directly (Personal Correspondence with DSPS Director, Gail Conrad, March 12, 2015).

In much the same way, Lassen College provides disabled students options in how they are able to access academic supports, such as tutoring (Personal Correspondence with DSPS Director, Cindy Howe, March 12, 2015). Lassen College, similar to Mesa College, provides disabled students various avenues for receiving academic support. As such, they have created space for students to integrate into general campus educational support services, while receiving disability-specific support from the local college DSPS office.

Implications for Higher Education Literature and Scholarship

This current investigation has implications for higher education literature and scholarship in two distinct ways. First, this investigation adds to the literature on underrepresented students within institutions of higher education, specifically disabled students. Second, this investigation adds unique perspective on the community colleges' mission of access by providing a perspective previously absent from community scholarship.

The literature on underrepresented students within institutions of higher education has largely ignored concerns relevant to disabled students (Amundson, 2010; Pena, 2014). As such, a growing population, nearly 11% of the total U. S. student population, is marginalized in the literature as a result of their disability status (Newman et al., 2010; Pena, 2014; Raue & Laurie, 2011). This investigation contributes to the existing literature and scholarship in higher education by placement of the scholarship on disabled students

away from the margins of academia into a more central and valued place within higher education scholarship.

This investigation has also added a unique perspective on community colleges' mission of access. This perspective on access is consistent with Longmoore's (2009) argument that disabled individuals have "pressed forward a broad concept of equal access that has sought to guarantee full participation in society" (p. 144). Prior scholarship has attempted to discuss the community college in terms of open access policies in relation to an equity agenda (Bailey & Morest, 2006; Dougherty, 1994; Perin, 2006; Rhoads & Valadez, 1996; Shannon & Smith, 2006; Valadez, 2002). In other words, if the community college is a house, the scholarship has largely focused on the front door, or entrance, of the house. However, others have attempted to focus dually on both the front door (access) and the back door (outcomes) arguing that one should not exist without the other (Dowd, 2003). Yet, these arguments in the literature which use the language of access and opportunity have failed to account for the navigation by students, particularly nontraditional students, of the social space, or the actual hallways and rooms within the house. By failing to recognize the highly nontraditional student (Levin, 2014), the scholarship on equity and access has failed to live up to its own dogmatic allegiance to the equity agenda. Even when scholarship has addressed the navigation of the institution by nontraditional students (Levin, 2014), it has been done typically through conceptual frames of justice which fail to account for the challenges experienced by disabled students as they encounter institutional policies (Pena, 2014; Raue & Lewis, 2011). As such, this investigation provides a means for the evaluation of institutional policies within

community colleges that acknowledges the importance of both access (front door policies) and outcomes (back door policies) while accounting for the policies that form the actual navigable architecture of the institutional space.

Significance

The findings on access and opportunity presented are significant for a number of reasons. First, the number of disabled students nationally is growing as a percentage of the college-going population. Second, recent legislation in California at the state level (Adult Education Block Grant, Student Success Support Programs, Student Equity Programs, and Basic Skills Initiative) has provided financial support to community colleges in order to, among other concerns, address the learning needs of adults with disabilities. Therefore, an explanation of how policies that affect disabled students, particularly funding policies, are constructed is essential to the development of good policy. Third, the research into an expanded definition of access provides additional analytical tools in the examination of higher education policies, particularly for at-risk groups.

Nationally, the percent of disabled students in U. S. institutions of higher education has grown from 3% in 1978, when the Carter administration implemented the regulations associated with section 504 of the Rehabilitation Act, to 9% in the early 1990s, once the Americans with Disabilities Act (1990) was passed (Henderson, 1999). As of 2010, disabled students made up nearly 11% of the total U. S. student population (Raue & Laurie, 2011). As incidence rates rise, so too do disability-specific programs at the postsecondary level, including at the community college level, where programs have

risen in number as well (Grigal & Hart, 2013). Moreover, as disabled student rates and student disability program rates rise, policies will be created and implemented in response. Therefore, understandings derived from analysis of the socio-political space occupied by disabled students within these policies are essential. This investigation has initiated this analysis.

As California's community colleges have emerged from the financial crisis of 2008, several new funding measures have been implemented at the state level. While the passage of SB 1456 (SSSP) created additional funding for matriculation and outcome-based interventions, simultaneously the state implemented SB 860 in the California's education code with the premise that colleges would not be allowed to receive SSSP funds unless there was a plan (Student Equity Plan) to address disparities in outcomes for identified students groups (according to race, ability, or age). Added to these funds was funding through the Adult Education Block Grant (AB 104) as well as an increase in the funding allotted through the Basic Skills Initiative (BSI) funding mechanism.

The connection of each of these funding policies emphasizes the outcomes for various student groups. Within outcome-based emphasis in CCC, funding is consistently coupled with a renewed focus on access, specifically written into SB 860, but expressed in the other funding policies in a variety of manners. Therefore, as new policies and legislation provide funding for local community colleges, there is a need for a more nuanced analytical tool in which to ensure access. Disparities can be examined quantitatively by enrollment, retention, or outcome data as available through the CCCCCO's data mart (<http://datamart.cccco.edu/>). Yet, if disparities are to be examined

within these policies, then an explanation of how access is shaped by these policies is required as well. As such, this investigation provides a necessary tool for the examination of access beyond enrollment, particularly as a more nuanced concept that offers a means for the evaluation and explanation of the socio-political space in which students are influenced by these policies.

Study Limitations and Implications for Research

This investigation proposed to examine the manner in which CCC policy, structures, and practices shape educational opportunities for disabled students. To that end, this investigation was successful in explaining CCC policy in light of the stated research questions through the use of the identified frameworks. However, this investigation also premised this investigation on a problem statement indicating that disabled students were not enrolling in California's community colleges at a rate representative of the general population at large or even at a rate consistent with a national averages (4% in California compared to 11% Nationally). To that end, this investigation was limited in its ability to identify any connection between existing CCC policies and the lack of enrollment. Although I could speculate on an explanation consistent with my findings, there is room for an investigation that explains why disabled students do not account for a greater percentage of the CCC student population.

Professionals removed from the policy process (e.g., social workers, educators, police officers) have a high degree of discretion in the manner in which policies are enacted (Lipsky, 2010). Lipsky (2010) labeled these autonomous agents street-level bureaucrats. While research indicates that the ability to interpret policies is constrained

by the manner in which policies are created (Lipsky, 2010; Stone, 2002), there remains a degree of latitude available to these autonomous agents in their ability to interpret policy mandates. As such, while this investigation explained the space created by larger institutional policies in CCC, there remains an opportunity for investigation into the manner in which individual colleges interpret and implement Title 5 at a local level.

This investigation addressed a series of policies in an individual higher education institutional system. As such, the findings are limited to that same institutional system, and thus requires further exploration to be applicable to a broader scale. As indicated previously, California's rate of enrollment for disabled students is far outside the national average. Yet, due to California's size, nearly half of all disabled students, nationally, are enrolled in a California community college (Raue & Laurie, 2011). The size and scope of California's community college system offers valuable research opportunities; however, these same attributes position California as atypical in comparison to other community college systems within the U. S. As such, this investigation creates an impetus for further study into other community college systems as well as, potentially, four-year colleges and universities.

This investigation has a number of limitations relative to disabled students that invite future research. Yet, there are implications within the current investigation for research into access and opportunities on students who are not identified as disabled. This investigation has broadened the concept of access and opportunity as related to disabled students. Yet, critical disability scholarship has shown, consistently, parallels between disabled individuals and other often marginalized groups (Hahn, 1994, 1997,

2002; Pfeiffer, 2001; Silvers, Wasserman, & Mahowald, 1998). As such, this investigation provides a framework for the examination of policies that affect access and opportunity for various underrepresented and under researched groups in higher education, such as foster youth.

While in the system, foster youth, who live without parental or familial support, manifest problems with a variety of issues such as education, mental and physical health, and substance abuse (Shin, 2003; Wald & Martinez, 2003). These problems include multiple elementary and secondary school enrollments while in placement, behavioral problems, homelessness, incarceration (usually in a local juvenile detention facility), emotional disorders, compromised brain development, high levels of depression, social phobia, panic disorders, post-traumatic stress disorder, and HIV/AIDS throughout their childhood and subsequent educational lifespan (Casey Family Programs, 2006; Chipungu & Bent-Goodley, 2004; Cook, 1991; Massinga & Pecora, 2004; McMillen & Tucker, 1999; Pecora, et al, 2005; Pecora, et al, 2003; Pecora, Havalchak, & O'Brien, 2005; Piliavin, Sosin, Westerfelt, & Matsueda, 1987). These issues and concerns all create challenges once a youth exits the foster system and attempts to achieve success in higher education. Therefore, research on access that does not account for the above will ultimately fail to provide a whole picture for these youth (Davis, 2006; Pecora, Havalchak, & O'Brien, 2005). As such, an analytical tool, as presented in this investigation, can provide a means for examination of educational opportunities for this unique social subgroup. The importance of such a tool is further strengthened in state institutions which have begun to implement policies created to address access and

educational outcomes for former foster youth, such as California's Foster Youth Success Initiative (FYSI) [California Community College Chancellor's Office, 2014].

Conclusion

This investigation set out with the aim to provide an explanation of disability policy within CCC. Furthermore, this investigation sought to explain the ways in which policy design shapes educational opportunities for students with disabilities. Also, this investigation sought to explain the ways and extent to which policies and political discourses legitimate power relationships between disabled students and their institutions. Finally, this investigation sought to expand the concepts of access and opportunities as used in conjunction with disabled students, specifically, but with all demographic subgroups who struggle with access and opportunity in general. Through a thorough analysis of CCC policy, these aims have been accomplished.

This investigation identified that access and opportunity, within the socio-political context in which disabled students navigate their institutions, are constrained within CCC policies. However, I have identified two additional themes within this investigation which, when coupled with the literature and scholarship reviewed in chapters two and three, serve as a concluding statement to this investigation. .

First, there is a condition of rampant individualism that provides limitations to the opportunities available to disabled students. The literature on disability evokes a deficit-driven view of disabled students, also known as a Medical Model approach to disability (Mitra, 2006; Pfeiffer, 2001). However, within higher education literature there is a body of scholarship that speaks to neoliberal policies, which limit corporate, or institutional,

responsibilities in favor of individualized support and responsibility (Ayers, 2005; Levin, 2014). Therefore, when disabled students find themselves in institutions of higher education they face constraints from those who view them through a Medical Model as well as institutions that have adopted a neoliberal lens or agenda. As such, there remains a need, as this investigation has sought to accomplish, to examine and explain the ways in which radical individualism, whether in the form of a Medical Model or a neoliberal agenda, continues to further marginalize already marginalized individuals.

Second, there is a need for an approach to justice that accounts for all segments of society. As identified in this investigation, existing approaches to justice fail to account for disabled individuals. Indeed, current approaches to justice that exclude disabled individuals are part of the disabling experience. Throughout this investigation, I have attempted to employ the Capabilities Approach as a theory of justice. The Capabilities Approach provided a meaningful framework for this investigation; yet, the Capabilities Approach is a normative framework for the assessment of poverty, inequality, and the design of social institutions rather than a theoretical approach to justice (Riddle, 2014; Robeyns, 2011; Terzi, 2005). Therefore, through an examination of justice through the lens of disability, I have suggested that there are failings in predominant theories of justice in advocating for disabled individuals with meaningful conditions of equity, opportunity, and participation in a just society. As such, disabled individuals will continue to be left out of the larger discourses on justice until such a time as a meaningfully articulated theory of justice that encapsulates the lived experiences of disabled individuals can be applied to the existing body of theoretical literature.

This investigation addressed the aims and questions presented at the outset. In general, CCC policy, structures, and practices restrict educational opportunities for disabled students by perpetrating a deficit view of disabled students, which, consequently, empowers professionals while simultaneously disempowering disabled students. Disabled students are disempowered through the constraints of potential options by the articulation of disability-specific policies, particularly the placement of disabled students outside generally funded programs within the institution. This approach to disabled students is consistent with a larger discourse of disability-as-deficit as viewed within educational and sociological scholarship. Furthermore, this investigation furthered the concepts of access and opportunities as analytical tools for explanation of the socio-political space in which disabled students, and other marginalized groups, navigate institutions. Yet, there is more research to be done, in other institutional settings as well as with other marginalized groups. Finally, although this investigation highlights the need to respond critically to the radical individualism and exclusive theories of justice which isolate and alienate individuals most in need of corporate and institutional support, the work completed in this investigation remains but one voice, albeit a critical voice, in the ongoing quest for access and opportunity for those too often silenced by institutional policies, societal ideologies, and, scholarly biases.

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Appendix A

Title 5 DSPS Policy-1993

C.C.R. 5 §56000 to §56076

Title 5 Regulations
Chancellor's Office California Community
Colleges DSPS Title 5 Regulations
DISABLED STUDENT PROGRAMS AND
SERVICES
Revised 1993

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DSPS Title 5 Regulations
Article 1. General Provisions and Definitions

Section 56000. Scope of Chapter.

This subchapter applies to community college districts offering support services, or instruction through Disabled Student Programs and Services (DSPS), on and/or off campus, to students with disabilities pursuant to Education Code Sections 673 10-12 and 84850. Programs receiving funds allocated pursuant to Education Code Section 84850 shall meet the requirements of this subchapter. Any support services or instruction funded, in whole or in part, under the authority of this subchapter must:

(a) not duplicate services or instruction which are otherwise available to all students;

(b) be directly related to the educational limitations of the verified disabilities of the students to be served;

(c) be directly related to the students' participation in the educational process;

(d) promote the maximum independence and integration of students with disabilities; and

(e) support participation of students with disabilities in educational activities consistent with the mission of the community colleges as set forth in Education Code Section 66701.

Note: Authority cited: Sections 673 12, 70901, and 84850, Education Code.
Reference:

Sections 66701, 67310-1 2, and 84850, Education Code.

Section 56002. Student with a Disability.

A "student with a disability" or "disabled student" is a person enrolled at a community college who has a verified impairment which limits one or more major life activities, as defined in 28 C.F.R. 35.104, and which imposes an educational limitation as defined in Section 56004. For purposes of reporting to the Chancellor under Section 56030, students with disabilities shall be reported in the categories described in Sections 5603244.

Note: Authority cited: Sections 673 12, 70901, and 84850, Education Code.
Reference: Sections 67310-1 2 and 84850, Education Code.

Section 56004. Educational Limitation.

As used in this subchapter, "educational limitation" means disability related functional "limitation in the educational setting. This occurs when the limitation prevents the student from fully benefiting from classes, activities, or services offered by the college to non-disabled students, without specific additional support services or instruction as defined in Section 56005.

Note: Authority cited: Sections 67312, 70901, and 84850, Education Code.
Reference: Sections 67310-12 and 84850, Education Code.

Section 56005. Support Services or Instruction

As used in this subchapter, “support services or instruction” means any one or more of the services listed in Section 56026, special class instruction authorized under Section 56028, or both.

Note: Authority cited: Sections 67312, 70901, and 84850, Education Code.
Reference: Sections 67310- 12 and 84850, Education Code.

Section 56006. Determination of Eligibility

(a) In order to be eligible for support services or instruction authorized under this subchapter, a student with a disability must have an impairment which is verified pursuant to subdivision (b) which results in an educational limitation identified pursuant to subdivision (c) of this section.

(b) The existence of an impairment may be verified, using procedures prescribed by the Chancellor, by one of the following means:

- (1) observation by DSPS professional staff with review by the DSPS coordinator;
- (2) assessment by appropriate DSPS professional staff; or
- (3) review of documentation provided by appropriate agencies or certified or licensed

(c) The student’s educational limitations must be identified by appropriate DSPS professional staff and described in the Student Educational Contract (SEC) required pursuant to Section 56022. Eligibility for each service provided must be directly related to an educational limitation consistent with Section 56000(b) and Section 56004.

Note: Authority cited: Sections 67312, 70901, and 84850, Education Code.
Reference: Sections 67310-12 and 84850, Education Code.

Section 56008. Student Rights

(a) Participation by students with disabilities in Disabled Student Programs and Services shall be entirely voluntary.

(b) Receiving support services or instruction authorized under this subchapter shall not preclude a student from also participating in any other course, program or activity offered by the college.

(c) All records maintained by DSPS personnel pertaining to students with disabilities shall be protected from disclosure and shall be subject to all other requirements for handling of student records as provided in Subchapter 2 (commencing with Section 54600) of Chapter 5 of this Division.

Note: Authority cited: Sections 67312, 70901, and 84850, Education Code.
Reference: Sections 67310-12 and 84850, Education Code.

Section 56010. Student Responsibilities

(a) Students receiving support services or instruction under this subchapter shall:

- (1) comply with the student code of conduct adopted by the college and all other applicable statutes and regulations related to student conduct;
- (2) be responsible in their use of DSPS services and adhere to written service provision policies adopted by DSPS; and
- (3) make measurable progress toward the goals established in the student's Student Educational Contract or, when the student is enrolled in a regular college course, meet academic standards established by the college pursuant to Subchapter 8 (commencing with Section 55750) of Chapter 6 of this Division.

(b) A district may adopt a written policy providing for the suspension or termination of DSPS services where a student fails to comply with subdivisions (a)(2) or (a)(3) of this section. Such policies shall provide for written notice to the student prior to the suspension or termination and shall afford the student an opportunity to appeal the decision. Each student shall be given a copy of this policy upon first applying for Note: Authority- cited: Sections 67312, 70901, and 84850, Education Code.
Reference: Sections 67310-1 2 and 84850, Education Code.

Article 2. DSPS Services

Section 56020. Availability of Services

Each community college district receiving funds pursuant to this subchapter shall employ reasonable means to inform all students and staff about the support services or instruction available through the DSPS program.

Note: Authority cited: Sections 67312, 70901, and 84850, Education Code.
Reference: Sections 67310-12 and 84850, Education Code.

Section 56022. Student Educational Contract

A Student Educational Contract (SEC) is a plan to address specific needs of the student. An SEC must be established upon initiation of DSPS services and shall be reviewed and updated annually for every student with a disability participating in DSPS. The SEC specifies those regular and/or special classes and support services identified and agreed upon by both the student and DSPS professional staff as necessary to meet the student's specific educational needs. The SEC shall be reviewed annually by a DSPS

professional staff person to determine whether the student has made progress toward his/her stated goal(s).

Whenever possible the SEC shall serve as the Student Educational Plan (SEP) and shall meet the requirements set forth in Section 55525 of this division. In addition, for students in noncredit special classes, each SEC shall include, but need not be limited to a description of the criteria used to evaluate the student's progress.

Note: Authority cited: Sections 67312, 70901, and 84850, Education Code.
Reference: Sections 67310-12 and 84850, Education Code.

Section 56026. Support Services.

Support services are those specialized services available to students with disabilities as defined in Section 56002, which are in addition to the regular services provided to all students. Such services enable students to participate in regular activities, programs, and classes offered by the college. They may include, but need not be limited to:

(a) Basic fixed cost administrative services associated with the ongoing administration and operation of the ASPS program. These services include:

- (1) Access to and arrangements for adaptive educational equipment, materials, and supplies required by students; with disabilities;
- (2) Job placement and development services related to transition to employment;
- (3) Liaison with campus and/or community agencies, including referral to campus or community agencies and follow-up services;
- (4) Registration assistance relating to on- or off-campus college registration, including priority enrollment assistance, application for financial aid, and related college services;
- (5) Special parking, including on-campus parking registration or, while an application for the State handicapped placard or license plate is pending, provision of a temporary parking permit.
- (6) Supplemental specialized orientation to acquaint students with environmental aspects of the college and community;

(b) Continuing variable cost services which fluctuate with changes in the number of students or the unit load of the students. These services include, but are not limited to:

- (1) test-taking facilitation, including arrangement, proctoring, and modification of test and test administration for students; with disabilities;
- (2) assessment, including both individual and group assessment not otherwise provided by the college, to determine functional educational and vocational levels or to verify specific disabilities;
- (3) counseling, including specialized academic, vocational, personal, and peer counseling services specifically for students, with disabilities, not duplicated by

- ongoing general counseling services available to all students;
- (4) interpreter services, including manual and oral interpreting for hearing-impaired students;
 - (5) mobility assistance (on-campus), including manual or motorized transportation to and from college courses and related educational activities;
 - (6) Notetaker services, to provide assistance to students with disabilities in the classroom;
 - (7) reader services, including the coordination and provision of services for students with disabilities in the instructional setting;
 - (8) speech services provided by a licensed speech language pathologist for students with verified speech disabilities;
 - (9) transcription services, including, but not limited to, the provision of Braille and print; materials;
 - (10) transportation assistance (off-campus), only if not otherwise provided by the college to all students, where public accessible transportation is unavailable or is deemed inadequate by the Chancellor's Office;
 - (11) specialized tutoring services not otherwise provided by the college;
 - (12) outreach activities designed to recruit potential students with disabilities to the
 - (13) accommodations for participation in co-curricular activities directly related to the college; student's enrollment in state-funded educational courses or programs; and
 - (14) repair of adaptive equipment donated to the DSPS program or purchased with funds provided under this subchapter.
- (c) One-time variable costs for purchase of DSPS equipment, such as adapted educational equipment, materials, supplies, and transportation vehicles.

Note: Authority cited: Sections 673 12, 70901, and 84850, Education Code.
Reference:

Sections 67310-12 and 84850, Education Code.

Section 56027. Academic Accommodations.

Each community college district receiving funding pursuant to this subchapter shall, consistent with Section 53203 of this division, establish a policy and procedure for responding, in a timely manner, to accommodation requests involving academic adjustments. This procedure shall provide for an individualized review of each request. The procedure shall also permit the Section 504 Coordinator, or other designated district official with knowledge of accommodation requirements, to make an interim decision pending a final resolution.

Note: Authority cited: Sections 67312, 70901, and 84850, Education Code.”
Reference: Sections 67310-12 and 84850, Education Code.

Section 56028. Special Classes Instruction.

Special classes are instructional activities offered consistent with the provisions of Section 56000 and designed to address the educational limitations of students with disabilities who are admitted to the institution pursuant to Education Code Sections 76000 et seq. and who would be unable to substantially benefit from regular college classes even with appropriate support services or accommodations. Such classes generate revenue based on the number of full-time equivalent students (FTES) enrolled in the classes.

Such classes shall be open to enrollment of students who do not have disabilities; however, to qualify as a special class, a majority of those enrolled in the class must be students with disabilities. Special classes offered for credit or noncredit shall meet the applicable requirements for degree credit, non-degree credit, or noncredit set forth in Sections 55002 and 55805. 5 of this part. In addition, special classes shall:

- (a) Be designed to enable students with disabilities to compensate for educational limitations and/or acquire the skills necessary to complete their educational objectives;
- (b) Employ instructors who meet minimum qualifications set forth in Section 53414 of this division.
- (c) Utilize curriculum, instructional methods, or materials specifically designed to address the educational limitations of students with disabilities. Curriculum committees responsible for reviewing and/or recommending special class offerings shall have or obtain the expertise appropriate for determining whether the requirements of this section are satisfied; and
- (d) Utilize student/instructor ratios determined to be appropriate by the district given the educational limitations of the students with disabilities enrolled in each class. Class size should not be so large as to impede measurable progress or to endanger the well-being and safety of students or staff.

Note: Authority cited: Sections 67312, 70901, and 84850, Education Code.
Reference: Sections 67310-12 and 84850, Education Code.

Section 56029. Special Class Course Repeatability

Repetition of special classes is subject to the provisions of Sections 55761-63 and 58161 of this division. However, districts are authorized to permit additional repetitions of special classes to provide an accommodation to a student's educational limitations pursuant to state and federal nondiscrimination laws. Districts shall develop policies and procedures providing for repetition under the following circumstances:

- (a) When continuing success of the student in other general and/or special classes is dependent on additional repetitions of a specific class;
- (b) When additional repetitions of a specific special class are essential to completing a student's preparation for enrollment into other regular or special classes; or
- (c) When the student has a student educational contract which involves a goal other than completion of the special class in question and repetition of the Course will further the achievement of that goal.

Note: Authority cited: Sections 67312, 70901, and 84850, Education Code.
Reference: Sections 67310-12 and 84850, Education Code; 29 U. S.C. Sec. 794

Article 3. Reports, Plans, and Program Requirements

Section 56030. Reporting Requirements

Each community college district receiving funding pursuant to this subchapter shall submit such reports (including budget and fiscal reports described in Article 4) as the Chancellor may require. When submitting such reports, districts shall use the disability categories set forth in Sections 5603244 and shall conform to the reporting format, procedures, and deadlines the Chancellor may additionally prescribe.

Note: Authority cited: Sections 67312, 70901, and 84850, Education Code.
Reference: Sections 67310-12 and 84850, Education Code.

Section 56032. Physical Disability

Physical disability means a visual, mobility, or orthopedic impairment.

- (a) Visual impairment means total or partial loss of sight.
- (b) Mobility or orthopedic impairment means a serious limitation in locomotion or motor Note: Authority cited: Sections 67312, 70901, and 84850, Education Code. Reference: Sections 67310-12 and 84850, 'Education Code.

Section 56034. Communication Disability

Communication disability is defined as an impairment in the processes of speech, language, or hearing.

- (a) Hearing impairment means a total or partial loss of hearing function which impedes the communication process essential to language, educational, social, and/or cultural interactions.
- (b) Speech and language impairments mean one or more speech/language disorders of voice, articulation, rhythm, and/or the receptive and expressive processes of language.

Note: Authority cited: Sections 67312, 70901, and 84850, Education Code.
Reference: Sections 67310-12 and 84850, Education Code.

Section 56036. Learning Disability

Learning disability is defined as a persistent condition of presumed neurological dysfunction which may exist with other disabling conditions. This dysfunction continues despite instruction in standard classroom situations. To be categorized as learning disabled, a student must exhibit:

- (a) Average to above-average intellectual ability;
- (b) Severe processing deficit(s);
- (c) Severe aptitude-achievement discrepancies); and
- (d) Measured achievement in an instructional or employment setting.

Note: Authority cited: Sections 67312, 70901, and 84850, Education Code.
Reference: Sections 67310-12 and 84850, Education Code.

Section 56038. Acquired Brain Injury

Acquired brain impairment means a verified deficit in brain functioning which results in a total or partial loss of cognitive, communicative, motor, psycho-social, and/or sensory- perceptual abilities.

Note: Authority cited: Sections 67312, 70901, and 84850, Education Code.
Reference: Sections 67310-12 and 84850, Education Code.

Section 56040. Developmentally Delayed Learner

The developmentally delayed learner is a student who exhibits the following:

- (a) Below average intellectual functioning; and
- (b) Potential for measurable achievement in instructional and employment settings. Note: Authority cited: Sections 67312, 70901, and 84850, Education Code. Reference: Sections 67310-12 and 84850, Education Code.

Section 56042. Psychological Disability

- (a) Psychological disability means a persistent psychological or psychiatric disorder, or emotional or mental illness.
- (b) For purposes of this subchapter, the following conditions are not psychological disabilities:
 - (1) transvestitism, transsexualism, pedophilia, exhibitionism, voyeurism, genderidentity disorders not resulting from physical impairments, or other sexual behavior disorders;
 - (2) compulsive gambling, kleptomania, or pyromania; and
 - (3) psychoactive substance abuse disorders resulting from current illegal use of drugs. Note: Authority cited: Sections 67312, 70901, and 84850, Education

Code.Reference: Sections 67310- 12 and 84850, Education Code.

Section 56044. Other Disabilities

This category includes all students with disabilities, as defined in Section 56002, who do not fall into any of the categories described in Sections 56032-42 but who indicate a need for support services or instruction provided pursuant to Sections 56026 and 56028.

Note: Authority cited: Sections 67312, 70901, and 84850, Education Code.

Reference: Sections 67310-I2 and 84850, Education Code.

Section 56046. DSPS Program Plan

(a) Each district receiving funding pursuant to this subchapter shall submit to the Chancellor, at such times as the Chancellor shall designate, a DSPS program plan for each college within the district. Upon approval by the Chancellor, the plan shall be a contract between the district and the Chancellor. Expenditures of funds appropriated pursuant to this subchapter must conform to the approved plan.

(b) Each district shall submit updates to its program plan to the Chancellor upon request.

(c) The program plan shall be in the form prescribed by the Chancellor and shall contain at least all of the following:

- (1) the long-term goals of the DSPS program;
- (2) the short-term measurable objectives of the program;
- (3) the activities to be undertaken to accomplish the goals and objectives; and
- (4) a description of the methods used for program evaluation;.

Note: Authority cited: Sections 67312,70901, and 84850, Education Code.

Reference: Sections 67310-12 and 84850, Education Code.

Section 56048. Staffing

(a) Persons employed pursuant to this subchapter as counselors or instructors of students with disabilities shall meet minimum qualifications set forth in Section 53414 of Subchapter 4 of Chapter 4 of this division.

(b) Each district receiving funds pursuant to this subchapter shall designate a DSPS Coordinator for each college in the district. For the purpose of this section, the Coordinator is defined as that individual who has responsibility for the day-to-day operation of DSPS. The designated Coordinator must meet the minimum qualifications for a DSPS counselor or instructor set forth in Section 53414(a) through (d) or meet the minimum qualifications for an educational administrator set forth in Section 53420 and, in addition, have two (2) years full-time experience or the equivalent within the last four (4) years in one or more of the following fields:

(1) instruction or counseling or both in a higher education program for students with disabilities;

(2) administration of a program for students with disabilities in an institution of higher education;

(3) teaching, counseling, or administration in secondary education, working predominantly or exclusively in programs for students with disabilities; or

(4) administrative or supervisory experience in industry, government, public agencies, the military, or private social welfare organizations, in which the responsibilities of the position were predominantly or exclusively related to persons with disabilities.

(c) Districts receiving funding pursuant to this subchapter may also employ classified and/or paraprofessional support staff. Support staff shall function under the direction of a DSPS counselor, instructor, or Coordinator as appropriate for the support services or instruction being provided.

Note: Authority cited: Sections 67312, 70901, and 84850, Education Code.
Reference: Sections 67310-1 2 and 84850, Education Code.

Section 56050. Advisory Committee.

Each district receiving funds pursuant to this subchapter shall establish, at each college in the district, an advisory committee which shall meet not less than once per year.

The advisory committee shall, at a minimum, include students with disabilities and representatives of the disability community and agencies or organizations serving persons with disabilities.

Note: Authority cited: Sections 67312, 70901, and 84850, Education Code.
Reference: Sections 67310-12 and 84850, Education Code.

Section 56052. Evaluation.

The Chancellor shall conduct evaluations of DSPS programs to determine their effectiveness. Each college shall be evaluated at least once every five years. The evaluation shall, at a minimum, provide for the gathering of outcome data pertaining to: staff and student perceptions of program effectiveness, access requirements of the Americans with Disabilities Act (42 USC 12101 et seq.), compliance with Section 504 of the Federal Rehabilitation Act of 1973 (29 U.S. Sec. 794), compliance with Education Code Section 67311. 5 with respect to parking for persons with disabilities, and data on the implementation of the program as outlined in Education Code Section 84850.

Note: Authority cited: Sections 67312, 70901, and 84850, Education Code.
Reference: Sections 67310-12 and 84850, Education Code; and 29 U.S. Sec. 794.

Section 56054. Special Projects.

(a) Community college districts receiving funding pursuant to this subchapter shall cooperate to the maximum extent possible with the Chancellor in carrying out special projects. Such projects may include, but are not limited to, task force meetings, research studies, model programs, conferences, training seminars, and other activities designed to foster program development and accountability. Such special projects shall be funded from the three percent set-aside authorized pursuant to Education Code Section 84850(e).

(b) Where such special projects fund services to students, such students need not meet the eligibility criteria otherwise required under this subchapter, but such students shall meet any eligibility requirements which the Chancellor may prescribe.

Note: Authority cited: Sections 67312, 70901, and 84850, Education Code.

Reference: Sections 67310-12 and 84850, Education Code.

Article 4. Funding and Accountability Section 56060.

Basis of Funding.

Any community college district shall be entitled to receive funding pursuant to Education Code Section 84850 to offset the direct excess cost, as defined in Section 56064, of providing support services or instruction, or both, to students with disabilities enrolled in state-supported educational courses or programs.

Note: Authority cited: Sections 67312, 70901, and 84850, Education Code.

Reference: Sections 67310-12 and 84850, Education Code.

Section 56062. Provision of Support Services or Instruction.

A community college district will be deemed to have "provided support services or instruction" to a student with a disability, as required by Section 56060, if the student is enrolled in a special class or is enrolled in a regular class and received four or more service contacts per year with the DSPS program.

Note: Authority cited: Sections 67312, 70901, and 84850, Education Code.

Reference: Sections 67310-12 and 84850, Education Code.

Section 56064. Direct Excess Costs

Direct excess costs are those actual fixed, variable, and one-time costs (not including indirect administrative costs, as defined in Section 56068) for providing support services or instruction, as defined in Sections 56026 and 56028, which exceed the combined total of the following:

(a) the average cost to the district of providing comparable services (as defined in Section 56066) to non-disabled students times the number of students receiving such services from DSPS;

(b) the revenue derived from special classes as provided in Section 56070;

and

(c) any other funds for serving students with disabilities which the district receives from federal, state, or local sources other than discretionary district funds.

Note: Authority cited: Sections 67312, 70901, and 84850, Education Code.
Reference: Sections 67310-12 and 84850, Education Code.

Section 56066. Comparable Services

(a) As used in Section 56064, “comparable services” are those services which are comparable to services available from a college to its non-disabled students. These services include, but are not limited to:

- (1) job placement and development as described in Section 56026 (a)(2);
- (2) registration assistance as described in Section 56026(a)(4);
- (3) special parking as described in Section 56026(a)(5);
- (4) assessment as described in Section 56026(b)(2);
- (5) counseling as described in Section 56026(b)(3);
- (6) tutoring as described in Section 56026(b){ 11}; and
- (7) outreach as described in Section 56026(b)(12).

(b) Districts which claim reimbursement for direct excess costs for comparable services as “defined in subdivision (a) must, for each college in the district:

(1) certify that the service in “question” is not offered to non-disabled students; or

(2) collect and report to the Chancellor, on forms prescribed by the Chancellor, data showing the number of new and the number of continuing students with disabilities enrolled in credit courses who received one or more such services, in whole or in part, from DSPS.

(c) The Chancellor shall adjust the allocation of each district by the number, if any, of students reported pursuant to subdivision (b)(2), times the applicable credit student services funding rates for new and continuing students calculated pursuant to Article 4 (commencing with Section 58730) of Subchapter 4 of Chapter 9 of this division.

Note: Authority cited: Sections 67312, 70901, and 84850, Education Code.
Reference: Sections 67310-12 and 84850, Education Code.

Section 56068. Indirect Administrative Costs

As used in Section 56064, the term “indirect administrative costs” means any administrative overhead or operational cost, including but not limited to, the following:

(a) college administrative support costs, such as staff of the college business office, bookstore, reproduction center, etc.:

- (b) administrative salaries and benefits, with the exception of the DSPS Coordinator;
- (c) indirect costs, such as heat, light, power, telephone, FAX, gasoline, and janitorial;
- (d) costs of construction, except for removal or modification of minor architectural barriers;
- (e) staff travel costs for other than DSPS-related activities or functions;
- (f) costs for on- and off-campus space and plant maintenance;
- (g) the cost of office furniture (e.g., desks, bookcases, filing cabinets, etc.);
- (h) costs of dues or memberships for DSPS staff;
- (i) rent of off-campus space;
- (j) costs for legal matters, election campaigns, or audit expenses;
- (k) building costs, even if the new building were for exclusive use of DSPS;
- (l) books or other resource material purchases for the general or main library; or
- (m) equipment which is not, in whole or part, adapted for use by students with disabilities.

Note: Authority cited: Sections 67312, 70901, and 84850, Education Code.
Reference: Sections 67310-12 and 84850, Education Code.

Section 56070. Revenue from Special Classes.

(a) For purposes of Section 56064 (b), the revenue derived from special classes, for fiscal year 1995-96 and all subsequent years, shall be calculated by adding together the following:

- (1) the FTES instructional non-credit rate times the number of units of FTES in noncredit special classes; and
- (2) the FTES instructional credit rate, not including indirect administrative costs, times the number of units of FTES in credit special classes for each college in the district.

(b) In implementing this section, the Chancellor shall insure that increases or decreases in the amount of special class revenue attributed to a district solely as a result of the adoption of the "disaggregate" method of calculation described in subdivision (a) shall be spread evenly over a three (3) year phase-in period ending with full implementation for fiscal year 1995-96.

(c) Revenue from special classes shall be used for the provision of support services or instruction pursuant to Section 56026 and 56028 and shall not be used for indirect administrative costs as defined in Section 56068.

Note: Authority cited: Sections 67312, 70901, and 84850, Education Code.
Reference: Sections 67310-12 and 84850, Education Code.

Section 56072. Allocations; Reports; Audits; Adjustments.

(a) The Chancellor shall adopt an allocation formula which is consistent with the requirements of this subchapter. The Chancellor shall use this formula to make advance allocations of funding provided pursuant to Section 56060 to each community college district consistent with the district's approved DSPS program plan and the requirements of this article.

(b) A portion, not to exceed 10 percent, of the allocation may be based on the amount of federal, state, local, or district discretionary funds which the district has devoted to serving students with disabilities. Provided, however, that in no event shall any district be entitled to receive funding which exceeds the direct excess cost, as defined in Section 56064, of providing support services or instruction to students with disabilities.

(c) Each district shall submit such enrollment and budget reports as the Chancellor may require.

(d) The Chancellor shall provide for audits of DSPS programs to determine the accuracy of the reports required pursuant to subdivision (c).

(e) The Chancellor may, based on audit findings or enrollment/budget reports, adjust the allocation of any district to compensate for over- or under-allocated amounts in the current fiscal year or any of the three immediately preceding fiscal years.

Note: Authority cited: Sections 67312, 70901, and 84850, Education Code.
Reference: Sections 67310-12 and 84850, Education Code.

Section 56074. Accounting for Funds.

Each community college district shall establish a unique budget identifier code to separately account for all funds provided pursuant to this subchapter. The district shall certify through fiscal and accounting reports prescribed by the Chancellor that all funds were expended in accordance with the requirements of this subchapter.

Note: Authority cited: Sections 67312, 70901, and 84850, Education Code.
Reference: Sections 67310-12 and 84850, Education Code.

Section 56076. Other Resources.

As a condition of receiving funds pursuant to this subchapter, each community college district shall certify that reasonable efforts have been made to utilize all funds from federal, state, or local sources which are available for serving students with disabilities.

Note: Authority cited: Sections 67312, 70901, and 84850, Education Code.
Reference: Sections 67310-12 and 84850, Education Code.

Appendix B

Title 5 DSPS Policy-2015

C.C.R. 5 §56000 to §56076

DSPS Title 5 Regulations
Chancellor’s Office, California
Community Colleges Disabled Student
Programs and Services

Revised 2015

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**Title 5 of the California Code of
Regulations**
*Disabled Student Programs and Services
(DSPS)*

Article One. General Provisions and
Definitions

§ 56000. Scope of Chapter.

This subchapter applies to community college districts offering academic adjustments, auxiliary aids, services and/or instruction through Disabled Student Programs and Services (DSPS), on and/or off campus, to students with disabilities pursuant to Education Code sections 67310-I3 and 84850.

Programs receiving funds allocated pursuant to Education Code section 84850 shall meet the requirements of this subchapter. Any academic adjustments, auxiliary aids, services and/or instruction funded, in whole or in part, under the authority of this subchapter must:

- (a) not duplicate services or instruction which are otherwise available to all students;
- (b) be directly related to the educational limitations of the verified disabilities of the students to be served;
- (c) be directly related to the students' participation in the educational process;
- (d) promote the maximum independence and integration of students with disabilities;
- (e) not include any change to curriculum or course of study that is so significant that it alters the required objectives or content of the curriculum in the approved course outline, thereby causing a fundamental alteration; and
- (f) support participation of students with disabilities in educational activities consistent with the mission of the community colleges as set forth in Education Code section 66010.4.

NOTE: Authority cited: Sections 67312, 70901 and 84850, Education Code.
Reference: Sections 66701, 67310-67313 and 84850, Education Code; and 42 U. S.C. Sec. 12101.

§ 56001. Definitions.

For purposes of this subchapter the following definitions shall apply:

- (a) Academic adjustments, auxiliary aids, and services: Academic adjustments, auxiliary aids and services, as used in this subchapter are any one or more of the services provided to DSPS students described in Section 56026 and/or educational assistance class instruction authorized under Section 56028.
- (b) Fundamental Alteration: A fundamental alteration means any change to a course curriculum or course of study that is so significant that it alters the required objectives or content of the curriculum in the approved course outline of the course.
- (c) Educational Limitation: An educational limitation means a disability related functional limitation in the educational setting. This occurs when the limitation prevents the student from having full access to and equal participation in the educational process including classes, activities, or services offered by the college to students without disabilities, without specific additional academic adjustments, auxiliary aids, services and/or instruction.
- (d) Educational Assistance Classes: educational assistance classes are instructional activities offered consistent with the provisions of Section 56000 designed to address the educational limitations of students with disabilities who are admitted to the institution pursuant to Educational Code Sections 76000 et seq. and who would be unable to substantially benefit from general college classes even with appropriate academic adjustments, auxiliary aids and services. This term replaces Special Classes, as used throughout Division 6 of Title 5.
- (e) Certificated staff: Certificated staff members are those who meet the minimum qualifications set forth in Section 53414 and 53420, Minimum Qualifications for Disabled Student Programs and Services Employees.
- (f) Academic Accommodation Plan: The Academic Accommodation Plan (AAP) is a record of the interactive process between each DSPS student and a DSPS professional staff member regarding the academic adjustments, auxiliary aids, services and/or instruction necessary to provide the student equal access to the educational process.

NOTE: Authority cited: Sections 67312, 70901 and 84850, Education Code.
Reference: Sections 67310-67313 and 84850, Education Code.

§ 56002. Student with a Disability.

A “student with a disability” is a person enrolled at a community college who has a verified disability which limits one or more major life activities, as defined in 28 C.F.R. 35.104 resulting in an educational limitation as defined in section 56001. For purposes of reporting to the Chancellor under Section 56030, students with disabilities shall be reported in the categories described in Sections 56032-44.

NOTE: Authority cited: Sections 67312, 70901 and 84850, Education Code.
Reference: Sections 67310-67312 and 84850, Education Code; and 28 U. S.C. Sec. 35.104.

§ 56006. Determination of Eligibility.

- (a) In order to be eligible for academic adjustments, auxiliary aids, services and/or instruction authorized under this chapter, a student must have a disability which is verified pursuant to subdivision (b) which results in an educational limitation identified pursuant to subdivision (c) of this section.
- (b) The existence of a disability may be verified, using procedures prescribed by the Chancellor, by one of the following means:
 - (1) observation by certificated DSPS staff;
 - (2) assessment by certificated DSPS staff; or
 - (3) review of documentation by certificated staff provided by appropriate agencies or certified or licensed professionals outside of DSPS.
- (c) The student’s educational limitations must be identified by certificated staff and described in the Academic Accommodation Plan (AAP) required pursuant to Section 56022. Eligibility for each service provided must be directly related to an educational limitation consistent with Section 56000(b) and Section 56001.

NOTE: Authority cited: Sections 67312, 70901 and 84850, Education Code.
Reference: Sections 67310-67312 and 84850, Education Code.

§ 56008. Student Rights.

- (a) Participation by students with disabilities in Disabled Student Programs and Services shall be entirely voluntary.
- (b) Receiving academic adjustments, auxiliary aids, services and/or instruction authorized under this subchapter shall not preclude a student from also participating in any other course, program or activity offered by the college.

- (c) All records maintained by DSPS personnel pertaining to students with disabilities shall be protected from disclosure and shall be subject to all other requirements for handling of student records as provided in Subchapter 6 (commencing with Section 54600) of Chapter 5 of this Division.

NOTE: Authority cited: Sections 67312, 70901 and 84850, Education Code.
Reference: Sections 67310-67313 and 84850, Education Code.

§ 56010. Student Responsibilities.

- (a) Students receiving academic adjustments, auxiliary aids, services and/or instruction under this subchapter shall:
 - (1) comply with the student code of conduct adopted by the college and all other applicable statutes and regulations related to student conduct;
 - (2) be responsible in their use of DSPS services and adhere to written service provision policies adopted by DSPS; and
 - (3) when enrolled in educational assistance classes, make measurable progress toward the goals developed for the course as established in the student's Academic Accommodation Plan (AAP) or,
 - (4) when the student is enrolled in general college classes, meet academic standards established by the college, as applied to all students, pursuant to Subchapter 6 (commencing with Section 55500) of Chapter 6 of this Division.
- (b) A district may adopt a written policy providing for the suspension or termination of DSPS services where a student fails to comply with subdivisions (a)(2), (a)(3) or (a)(4) of this section. Such policies shall provide for written notice to the student prior to the suspension or termination and shall afford the student an opportunity to appeal the decision. Each student shall be given a copy of this policy upon first applying for services from DSPS.

NOTE: Authority cited: Sections 67312, 70901 and 84850, Education Code.
Reference: Sections 67310-67312 and 84850, Education Code.

Article Two. DSPS Services

§ 56020. Availability of Services.

Each community college district receiving funds pursuant to this subchapter shall employ reasonable means to inform all students and staff about the availability of academic adjustments, auxiliary aids, services and/or instruction.

NOTE: Authority cited: Sections 67312, 70901 and 84850, Education Code.
Reference: Sections 67310-67312 and 84850, Education Code.

§ 56022. Academic Accommodation Plan (AAP).

Each college shall generate an Academic Accommodation Plan (AAP) and maintain a record of the interactive process between each DSPS student and a DSPS certificated staff member regarding the academic adjustments, auxiliary aids, services and/or instruction necessary to provide the student equal access to the educational process, given the educational limitations resulting from the student's disabilities. In addition, when a student is enrolled in educational assistance classes the AAP shall define measurable progress toward the goals of each class.

NOTE: Authority cited: Sections 67312, 70901 and 84850, Education Code.
Reference: Sections 67310-67312 and 84850, Education Code.

§ 56026. Academic Adjustments, Auxiliary Aids and Services.

Academic Adjustments, Auxiliary Aids and services are those specialized aids, devices and/or services available to students with disabilities as defined in Section 56002, which are in addition to the general services provided to all students. Such services enable students to participate in general activities, programs and classes offered by the college.

NOTE: Authority cited: Sections 67312, 70901 and 84850, Education Code.
Reference: Sections 67310-67312 and 84850, Education Code.

§ 56027. Academic Adjustments.

Each community college district receiving funding pursuant to this subchapter shall establish a policy and procedure for responding to, in a timely manner consistent with Section 53203 of this division, requests involving academic adjustments. This procedure shall provide for an individualized review of each request. The procedure shall also permit the Section 504/ADA Coordinator/Compliance Officer, or other

designated district official with knowledge of accommodation requirements, to make an interim decision pending a final resolution.

NOTE: Authority cited: Sections 67312, 70901 and 84850, Education Code.
Reference: Sections 67310-67312 and 84850, Education Code.

§ 56028. Educational Assistance Class Instruction.

Educational assistance classes are instructional activities offered consistent with the provisions of Subchapter 1 of Chapter 7 of this Division, and designed to address the educational limitations of students with disabilities who are admitted to the institution pursuant to Educational Code Sections 76000 et seq. and who would be unable to substantially benefit from general college classes even with appropriate academic adjustments, auxiliary aids and services. Such classes generate revenue based on the number of full-time equivalent students (FTES) enrolled in the classes.

Such classes shall be open to enrollment of students who do not have disabilities, however, to qualify as an educational assistance class, a majority of those enrolled in the class must be students with disabilities.

Educational assistance classes offered for credit or noncredit shall meet the applicable requirements for degree credit, non-degree credit, or noncredit set forth in Sections 55002 and

of this part. In addition, educational assistance classes shall:

- (a) Be designed to enable students with disabilities to compensate for educational limitations and/or acquire the skills necessary to complete their educational objectives;
- (b) Employ instructors who meet minimum qualifications set forth in Section 53414 of this Division.
- (c) Utilize curriculum, instructional methods, or materials specifically designed to address the educational limitations of students with disabilities. Curriculum committees responsible for reviewing and/or recommending educational assistance class offerings shall have or obtain the expertise appropriate for determining whether the requirements of this section are satisfied; and
- (d) Utilize student/instructor ratios determined to be appropriate by the District given the educational limitations of the students with disabilities enrolled in each class. Class size should not be so large as to impede measurable progress or to endanger the well-being and safety of students or staff.

NOTE: Authority cited: Sections 67312, 70901 and 84850, Education Code.
Reference: Sections 67310-67312 and 84850, Education Code.

§ 56029. Educational Assistance Class Course Repetition.

Repetition of educational assistance classes is subject to the provisions of article 4 (commencing with section 55040) of Subchapter 1 of Chapter 6 and Section 58161 of this Division. However, districts are authorized to permit additional repetitions of credit or noncredit educational assistance classes to provide an accommodation to a student's educational limitations pursuant to state and federal nondiscrimination laws. Districts shall develop policies and procedures providing for repetition under the following circumstances:

- (a) When continuing success of the student in other general and/or educational assistance classes is dependent on additional repetitions of a specific educational assistance class;
- (b) When additional repetitions of a specific educational assistance class are essential to completing a student's preparation for enrollment into other general or educational assistance classes; or
- (c) When the student has an Academic Accommodation Plan which involves a goal other than completion of the educational assistance class in question and repetition of the course will further achievement of that goal.

NOTE: Authority cited: Sections 55040, 67312, 70901 and 84850, Education Code.
Reference: Sections 67310-67312 and 84850, Education Code; and 29 U. S.C Sec.794.

Article Three. Reports, Plans and Program Requirements

§ 56030. Reporting Requirements

Each community college district receiving funding pursuant to this subchapter shall submit such reports (including budget and fiscal reports described in Article 4) as the Chancellor may require. When submitting such reports, districts shall use the disability categories set forth in Sections 56032-44 and shall conform to the reporting format, procedures, and deadlines the Chancellor may additionally prescribe.

NOTE: Authority cited: Sections 67312, 70901 and 84850, Education Code.
Reference: Sections 67310-67312 and 84850, Education Code.

§ 56032. Physical Disability.

Physical disability is defined as a limitation in locomotion or motor functions. These limitations are the result of specific impacts to the body's muscular-skeletal or nervous systems, and limit the student's ability to access the educational process.

NOTE: Authority cited: Sections 67312, 70901 and 84850, Education Code.
Reference: Sections 67310-67312 and 84850, Education Code.

§ 56034. Deaf and Hard of Hearing (DHH).

Deaf and Hard of Hearing (DHH) is defined as a total or partial loss of hearing function that limits the student's ability to access the educational process.

NOTE: Authority cited: Sections 67312, 70901 and 84850, Education Code.
Reference: Sections 67310-67312 and 84850, Education Code.

§ 56035. Blind and Low Vision.

Blindness and low vision is defined as a level of vision that limits the student's ability to access the educational process.

NOTE: Authority cited: Sections 67312, 70901 and 84850, Education Code.
Reference: Sections 67310-67312 and 84850, Education Code.

§ 56036. Learning Disability.

Learning disability (LD) is defined as a persistent condition of presumed neurological dysfunction which may exist with other disabling conditions. The dysfunction is not explained by lack of educational opportunity, lack of proficiency in the language of instruction, or other non-neurological factors, and this dysfunction limits the student's ability to access the educational process. To be categorized as a student with a learning disability a student must meet the following criteria through psycho-educational assessment verified by a qualified specialist certified to assess learning disabilities:

- (a) Average to above-average intellectual ability; and
- (b) Statistically significant processing deficit(s); and/or
- (c) Statistically significant aptitude-achievement discrepancies.

NOTE: Authority cited: Sections 67312, 70901 and 84850, Education Code.
Reference: Sections 67310-67312 and 84850, Education Code.

§ 56037. Acquired Brain Injury (ABI).

Acquired Brain Injury (ABI) is defined as a deficit in brain functioning which results in a total or partial loss of cognitive, communicative, motor, psycho-social and/or sensory-perceptual abilities, and limits the student's ability to access the educational process.

NOTE: Authority cited: Sections 67312, 70901 and 84850, Education Code.
Reference: Sections 67310-67312 and 84850, Education Code.

§ 56038. Attention-Deficit Hyperactivity Disorder (ADHD).

Attention-Deficit Hyperactivity Disorder (ADHD) is defined as a neurodevelopmental disorder that is a persistent deficit in attention and/or hyperactive and impulsive behavior that limits the student's ability to access the educational process.

NOTE: Authority cited: Sections 67312, 70901 and 84850, Education Code.
Reference: Sections 67310-67312 and 84850, Education Code.

§ 56039. Intellectual Disability (ID).

Intellectual disability (ID) is defined as significant limitations both in intellectual functioning and in adaptive behavior that affect and limit the student's ability to access the educational process. An individual may have an intellectual disability when:

- (a) the person's functioning level is below average intellectual ability; and
- (b) the person has significant limitations in adaptive skill areas as expressed in conceptual, social, academic and practical skills in independent living and employment; and,
- (c) the disability originated before the age of 18.

NOTE: Authority cited: Sections 67312, 70901 and 84850, Education Code.
Reference: Sections 67310-67312 and 84850, Education Code.

§ 56040. Autism Spectrum.

Autism Spectrum disorders are defined as neurodevelopmental disorders described as persistent deficits which limit the student's ability to access the educational process. Symptoms must have been present in the early developmental period, and cause limitation in social, academic, occupational, or other important areas of current functioning.

NOTE: Authority cited: Sections 67312, 70901 and 84850, Education Code.
Reference: Sections 67310-67312 and 84850, Education Code.

§ 56042. Mental Health Disability.

Mental Health disability is defined as a persistent psychological or psychiatric disability, or emotional or mental illness that limits the student's ability to access the educational process. For purposes of this subchapter, conditions that are not described and/or excluded in the American Psychiatric Association Diagnostic and Statistical Manual (DSM) or the Americans with Disabilities Act (ADA) are not covered in this category.

NOTE: Authority cited: Sections 67312, 70901 and 84850, Education Code.
Reference: Sections 67310-67312 and 84850, Education Code; 42 U. S.C. Sec. 12101; American Psychiatric Association (2013). *Diagnostic and Statistical Manual of Mental Disorders* (Fifth ed.). Arlington, VA: American Psychiatric Publishing.

§ 56044. Other Health Conditions and Disabilities.

This category includes all students with disabilities, as defined in Section 56002, with other health conditions, and/or disabilities that affect a major life activity, which are otherwise not defined in Sections 56032-56042, but which limit the student's ability to access the educational process.

NOTE: Authority cited: Sections 67312, 70901 and 84850, Education Code.
Reference: Sections 67310-67312 and 84850, Education Code.

§ 56046. DSPP Program Plan.

- (a) Each district receiving funding pursuant to this subchapter shall develop and submit to the Chancellor, at such times as the Chancellor shall designate, a DSPP program plan for each college within the district. Upon approval by the Chancellor, the plan shall be a contract between the District and the Chancellor. Expenditures of funds appropriated pursuant to this subchapter must conform to the approved plan.
- (b) The unit or program plan developed as part of a college's accreditation or strategic planning processes shall meet the requirements of the plan required by this section if it contains at least all of the following:
 - (1) the long-term goals of the DSPP program;
 - (2) the short-term measurable objectives of the program;
 - (3) the activities to be undertaken to accomplish the goals and objectives; and

(4) a description of the methods used for program evaluation.

(c) Each district shall submit updates to its plan to the Chancellor upon request.

NOTE: Authority cited: Sections 67312, 70901 and 84850, Education Code.

Reference: Sections 67310-67312 and 84850, Education Code.

§ 56048. Staffing.

(a) Each district receiving funds pursuant to this subchapter shall ensure sufficient DSPS certificated and support staff to provide timely and effective services to eligible students with disabilities.

(b) Each district receiving funds pursuant to this subchapter shall designate a DSPS coordinator or director for each college in the district. For the purpose of this section, the coordinator or director is defined as that individual for each college in the district who has responsibility for the day-to-day operation of DSPS, which is necessary to implement Subchapter 1 of Chapter 7 of this Division. For the coordinator or director, those responsibilities shall include, but are not limited to, integration of DSPS into the college's instruction and services, the provision of academic adjustments, auxiliary aids, and services, maintaining knowledge of the legal responsibilities regarding students with disabilities participation in the educational process, and budget planning. The designated coordinator or director must meet the minimum qualifications for a DSPS counselor or instructor set forth in Section 53414(a) through (d) or meet the minimum qualifications for an educational administrator set forth in Section 53420 and, in addition, have two (2) years full-time experience or the equivalent within the last four

(4) years in one or more of the following fields:

(1) instruction or counseling or both in a higher education program for students with disabilities;

(2) administration of a program for students with disabilities in an institution of higher education;

(3) teaching, counseling or administration in secondary education, working predominantly or exclusively in programs for students with disabilities; or

(4) administrative or supervisory experience in industry, government, public agencies, the military, or private social welfare organizations, in which the responsibilities of the position were predominantly or exclusively related to persons with disabilities.

- (c) Persons employed pursuant to this Subchapter as counselors or instructors of students with disabilities shall meet minimum qualifications set forth in Section 53414 of Subchapter 4 of Chapter 4 of this Division.
- (d) Districts receiving funding pursuant to this subchapter may also employ classified and/or paraprofessional support staff. Support staff shall function under the coordination of a DSPS coordinator or director, counselor, LD Specialist, or instructor as appropriate for the academic adjustments, auxiliary aids, services and/or instruction being provided.

NOTE: Authority cited: Sections 67312, 70901 and 84850, Education Code.
Reference: Sections 67310-67312 and 84850, Education Code.

§ 56050. Advisory Committee.

Each district receiving funds pursuant to this subchapter shall establish, for either the District or at each college in the district, an advisory committee which shall meet not less than once per year. The advisory committee shall, at a minimum, include a student with disabilities.

NOTE: Authority cited: Sections 67312, 70901 and 84850, Education Code.
Reference: Sections 67310-67312 and 84850, Education Code.

§ 56052. Evaluation.

The Chancellor shall conduct evaluations of DSPS programs to determine their effectiveness. Each college shall be evaluated at least once every five years. The evaluation shall at a minimum, provide for the gathering of outcome data and data pertaining to, staff and student perceptions of program effectiveness, access requirements of the Americans with Disabilities Act (42 U. S.C. 12101 et seq.), compliance with Section 504 of the Federal Rehabilitation Act of 1973 (29 U. S.C. 794) and data on the implementation of the program as outlined in Education Code Section 84850.

NOTE: Authority cited: Sections 67312, 70901 and 84850, Education Code.
References: Sections 67310-67312 and 84850, Education Code; and 29 U. S.C. Sec. 794.

§ 56054. Special Projects.

- (a) Community college districts receiving funding pursuant to this subchapter shall cooperate to the maximum extent possible with the Chancellor in carrying out special projects, which may include, but are not limited to, task

force meetings, research studies, model programs, conferences, training seminars, and other activities designed to foster program development and accountability. Such projects shall be funded from the three percent set aside authorized pursuant to Education Code Section 84850(e).

- (b) Where such projects fund services to students, such students need not meet the eligibility criteria otherwise required under this subchapter, but such students shall meet any eligibility requirements which the Chancellor may prescribe.

NOTE: Authority cited: Sections 67312, 70901 and 84850, Education Code.
Reference: Sections 67310-67312 and 84850, Education Code.

Article Four. Funding and Accountability

§ 56060. Basis of Funding.

Any community college district shall be entitled to receive funding pursuant to Education Code Section 84850 to offset the allowable expenses, as defined in Section 56064, of providing academic adjustments, auxiliary aids, services and/or instruction to students with disabilities enrolled in state-supported educational courses or programs.

NOTE: Authority cited: Sections 67312, 70901 and 84850, Education Code.
Reference: Sections 67310-67312 and 84850, Education Code.

§ 56062. Provision of Academic Adjustments, Auxiliary Aids, Services and/or Instruction.

A community college district will be deemed to have “provided academic adjustments, auxiliary aids, services and/or instruction” to a student with a disability, as required by Section 56060, if the student is enrolled in an educational assistance class or is enrolled in a general class and received one or more service contacts each semester the student attends.

NOTE: Authority cited: Sections 67312, 70901 and 84850, Education Code.
Reference: Sections 67310-67312 and 84850, Education Code.

§ 56064. Allowable Expenses.

- (a) Allowable expenses are those actual fixed, variable, and one-time costs (not including non-allowable expenses, as defined in Section 56068) for providing academic adjustments, auxiliary aids, services and/or instruction, as defined in Sections 56026 and 56028, which exceed the combined total of the following:
 - (1) the average cost to the district of providing comparable services (as

defined in Section 56066) to students without disabilities times the number of students with disabilities receiving such services from DSPS;

- (2) the revenue derived from educational assistance classes as provided in Section 56070; and
 - (3) any other funds for serving students with disabilities which the district receives from federal, state, or local sources other than discretionary district funds.
- (b) Allowable expenses may include the removal or modification of minor architectural barriers providing the funds expended do not exceed 1% of the current year DSPS allocation, unless an exception to the funding limitation has been granted by the Chancellor's Office.
 - (c) Allowable expenses may also include the purchase and repair of equipment.
 - (d) The cost of allowable expenses may fluctuate depending on the number of students or the unit load of the students.
 - (e) As used in Subchapter 1 of Chapter 7 of this Division, allowable expenses refers to direct excess costs, as is defined in Education Code Section 84850(c).

NOTE: Authority cited: Sections 67312, 70901 and 84850, Education Code.
Reference: Sections 67310-67312 and 84850, Education Code.

§ 56066. Comparable Services.

- (a) As used in Section 56064, "comparable services" are those services which are comparable to services available from a college to its students without disabilities. These services described in Section 56026 include, but are not limited to:
 - (1) job placement and development;
 - (2) registration assistance;
 - (3) accessible parking;
 - (4) assessment;
 - (5) counseling;
 - (6) tutoring, and
 - (7) outreach.
- (b) Districts which claim reimbursement for allowable expenses for comparable

services as defined in subdivision (a) must, for each college in the district:

- (1) certify that the service in question is not offered to students without disabilities; or
 - (2) collect and report to the Chancellor, on forms prescribed by the Chancellor, data showing the number of new and the number of continuing students with disabilities enrolled in credit courses who received one or more such services, in whole or in part, from DSPS.
- (c) The Chancellor shall adjust the allocation of each district by the number, if any, of students reported pursuant to subdivision (b)(2), times the applicable credit student services funding rates for new and continuing students calculated pursuant to Article 48 (commencing with Section 58730) of Subchapter 8 of Chapter 9 of this Division.

NOTE: Authority cited: Sections 67312, 70901 and 84850, Education Code.
Reference: Sections 67310-67312 and 84850, Education Code.

§ 56068. Non-Allowable Expenses.

The following expenses are not allowed to be paid by DSPS funds, including but not limited to:

- (a) college administrative staff salary and benefit costs (e.g., staff of the college business office, bookstore, reproduction center, etc.);
- (b) administrative salaries and benefits for staff at the dean salary level and above, with the exception of the applicable FTE of the DSPS coordinator or director;
- (c) indirect costs, such as rent, heat, light, power, telephone, FAX, internet service, gasoline and janitorial;
- (d) costs of construction, except for removal or modification of minor architectural barriers. These expenses must not exceed 1% of the current year DSPS allocation;
- (e) travel costs other than for DSPS staff and students for directly related DSPS activities or functions;
- (f) costs for on- and off-campus space and plant maintenance;
- (g) the cost of office furniture (e.g., desks, bookcases, filing cabinets, etc.);
- (h) political or professional association dues and/or contributions;
- (i) rent of off-campus space;

- (j) costs for legal matters, election campaigns, or audit expenses;
- (k) building costs, even if the new building were for exclusive use of DSPS;
- (l) books or other resource material purchases for the general or main library; or
- (m) vehicles or modification of vehicles including campus trams, unless used exclusively for students with disabilities.

NOTE: Authority cited: Sections 67312, 70901 and 84850, Education Code.
Reference: Sections 67310-67312 and 84850, Education Code.

§ 56070. Revenue from Educational Assistance Classes.

Revenue from educational assistance classes shall be used for provision of academic adjustments, auxiliary aids services and/or instruction pursuant to Sections 56026 and 56028 and shall not be used for non-allowable expenses as defined in Section 56068.

NOTE: Authority cited: Sections 67312, 70901 and 84850, Education Code.
Reference: Sections 67310-67312 and 84850, Education Code.

§ 56072. Allocations; Reports; Audits; Adjustments.

- (a) The Chancellor shall adopt an allocation formula which is consistent with the requirements of this Subchapter. The Chancellor shall use this formula to make advance allocations of funding provided pursuant to Section 56060 to each community college district consistent with the district's approved DSPS program/unit plan pursuant to Section 56046 and the requirements of this Article.
- (b) A portion, not to exceed 20 percent, of the allocation may be based on the amount of federal, state, local, or district discretionary funds which the district has devoted to serving students with disabilities. Provided, however, that in no event shall any district be entitled to receive funding which exceeds its allowable expenses, as defined in Section 56064, of providing academic adjustments, auxiliary aides and services or instruction to students with disabilities.
- (c) Each district shall submit such enrollment and budget reports as the Chancellor may require.
- (d) The Chancellor shall provide for audits of DSPS programs to determine the accuracy of the reports required pursuant to subdivision (c).
- (e) The Chancellor may, based on audit findings or enrollment/budget reports, adjust the allocation of any district to compensate for over or under-

allocated amounts in the current fiscal year or any of the three immediately preceding fiscal years.

NOTE: Authority cited: Sections 67312, 70901 and 84850, Education Code.
Reference: Sections 67310-67312 and 84850, Education Code.

§ 56074. Accounting for Funds.

Each community college district shall establish a unique budget identifier code to separately account for all funds provided pursuant to this subchapter. The district shall certify through fiscal and accounting reports prescribed by the Chancellor that all funds were expended in accordance with the requirements of this subchapter.

NOTE: Authority cited: Sections 67312, 70901, and 84850, Education Code.
Reference: Sections 67310-67312 and 84850, Education Code.

§ 56076. Other Resources.

As a condition of receiving funds pursuant to this subchapter, each community college district shall certify that reasonable efforts have been made to utilize all funds from federal, state, or local sources which are available for serving students with disabilities and shall report those expenditures to the Chancellor, as required by Section 56072.

NOTE: Authority cited: Sections 67312, 70901 and 84850, Education Code.
Reference: Sections 67310-67312 and 84850, Education Code.

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