



Public Schools of North Carolina

Section 504 Update



Freda M. Lee, Federal Program Administrator
North Carolina Department of Public Instruction
June 12, 2018

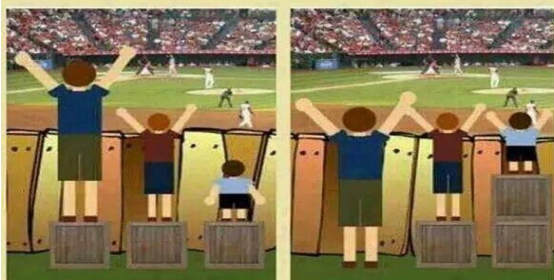
Section 504 – Purpose

- No individual with disabilities in the U.S. shall, solely by reason of his / her disability, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving federal financial assistance...
- Discrimination is the exclusion from participation in, or the denial of benefits of, any program or activity receiving or benefiting from federal financial assistance. Students may not be denied benefit from services that are afforded nondisabled students



Public Schools of North Carolina

Equality doesn't mean Justice



Equality

Justice



Public Schools of North Carolina

3

Discrimination

- Students are entitled to a "free, appropriate, public education" or **FAPE**
- An appropriate education is a program designed to meet the individual educational needs of individuals with disabilities as adequately as the needs of nondisabled students are met.
- Section 504 is about "leveling the playing field".



Public Schools of North Carolina

4

Leveling the Playing Field



Nothing is more unequal than
the equal treatment of
unequal people.....

Author Unknown



Public Schools of North Carolina

§ 504 Discrimination

- Exclusion or inferior treatment
- Different treatment that is not a justified response to the needs or capabilities of an individual with disabilities



Public Schools of North Carolina

6

§ 504 Discrimination

- Deny a qualified individual with a disability the opportunity to benefit from the aid, benefit or service
- Applies to **all** aspects of the school district's operations – academic, nonacademic and extracurricular



§ 504 Discrimination

- Provide a qualified individual with a disability an aid / benefit / service that is not as effective as that provided to others
- Regulates both services and buildings



Child Find

- **Section 504, IDEA and State law** all require the provision of a "free, appropriate public education" to all eligible students.
- FAPE** includes:
- The **requirement to identify all potentially eligible students**. This means that there must be ways for parents to refer their own children as potentially eligible; teachers must understand their obligations to identify and refer potentially eligible students; and administrators and others who work with children must understand these obligations.

Child Find (Continued)

- A decision must be made for each referred child as to whether or not an evaluation will be conducted.
- Under § 504, parents must be provided with annual notification of the protections of § 504, and how to access them. Parents should be receiving this notice as part of parent guides, direct correspondence, or other means reasonably designed to ensure that parents are aware of § 504. Schools decide whether or not an evaluation will be conducted and what the evaluation will consist of, as well as who will conduct the evaluation.

The Three Prongs of Eligibility

- Mental or physical impairment
- Substantial limitation
- Major life activities



First Prong

- Has a **physical or mental impairment** which substantially limits one or more major life activities
- **Physical Impairment**—any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genitourinary; hemic and lymphatic; skin; and endocrine; or
- **Mental Impairment**—any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Second Prong

Does the student's mental or physical impairment limit them from performing a major life activity when compared to a similarly situated student?



Public Schools of North Carolina

13

Third Prong: Limits Major Life Activities

Broadened to include the operations of major bodily functions:

- | | |
|---|---|
| <ul style="list-style-type: none"> ▪ Lifting ▪ Bending ▪ Speaking ▪ Breathing ▪ Learning ▪ Reading ▪ Concentrating ▪ Thinking ▪ Communicating ▪ Working | <ul style="list-style-type: none"> -immune system -bowel -brain -endocrine -normal cell growth -bladder -respiratory -reproductive -digestive -neurological |
|---|---|



Public Schools of North Carolina

14

Collaborative Case Study

- Groups of 3-4
- Create "504 case"
- Identify the 3 prongs if they exist
- Committee action (do not create plan)



Public Schools of North Carolina

15

Section 504 vs. IDEA: Understanding the Fundamentals of Section 504



Adapted from workshop presentation materials:
Richards Lindsay & Martin, L.L.P. Copyright 2014, 2015



Public Schools of North Carolina

Purposes of the Laws

- § 504 prevents discrimination in public schools (and programs or agencies receiving federal funds) Regulations call for equal educational opportunity (§ 504 FAPE)
- IDEA provides funding for participating States so they can develop and maintain special education programs

Copyright 2014, 2015 Richards Lindsay & Martin, L.L.P.



Public Schools of North Carolina

Child-Find Comparison

- § 504 requires districts to identify all students suspected of having disabilities and need for services who reside within their boundaries

A coordinated set of activities (training, notices, referral process, outreach efforts)

- IDEA—Same obligation, triggered by suspicion of disability and need for **sp ed** services

Copyright 2014, 2015 Richards Lindsay & Martin, L.L.P.



Public Schools of North Carolina

Eligibility Formulations

- § 504—Physical or mental impairments that substantially limit major life activities
No list of qualifying disabilities
- IDEA—Student meets eligibility criteria under one of 13 categories, and needs special education services (34 CFR 300.39(a))

Copyright 2014, 2015 Richards Lindsay & Martin, L.L.P.



Public Schools of North Carolina

2
1

Evaluations

IDEA—Testing-based process with detailed requirements and timelines

Written evaluation reports, administration of various test instruments (see 34 CFR 300.301, 304-305)

Stricter evaluation requirements, more structured process, more test data—due to funding, potential for segregated placement

Copyright 2014, 2015 Richards Lindsay & Martin, L.L.P.



Public Schools of North Carolina

FAPE Formulations

- § 504—Meeting the needs of eligible students as adequately as those of nondisabled students
An equal educational opportunity standard
No guarantee of equal result or maximization of potential
- IDEA—IEP calculated for appropriate progress in light of circumstances (*Endrew*)

Copyright 2014, 2015 Richards Lindsay & Martin, L.L.P.



Public Schools of North Carolina

2
2

Evaluations

§ 504 evaluations focus on review and consideration of various sources of relevant data (34 CFR 104.35(c))

A substantially different and more general evaluation model—may or may not include testing

Data sources mentioned—"aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, adaptive behavior"

Copyright 2014, 2015 Richards Lindsay & Martin, L.L.P.



Public Schools of North Carolina

2
4

Reevaluations

- § 504 requires periodic reevaluation
But at least every 3 years (many schools opt for annual review/re-eval)
Also needed prior to significant changes in placement (including manifestation determinations prior to disciplinary changes in placement)
- IDEA—Every three years (unless conditions warrant otherwise)

Copyright 2014, 2015 Richards Lindsay & Martin, L.L.P.



Public Schools of North Carolina

Programs

- § 504 —Focus on accommodations, some services, modifications to policies
§ 504 "special education" services (34 CFR 104.33(b))
Services **not** limited to low-cost or free services (see 2016 OCR ADHD Resource Guide, at 27)
§ 504 students entitled to **any** services § 504 team deems needed for FAPE, no matter the cost, "and especially where such services have been provided to IDEA-eligible students in the past." (e.g., some related services)

Copyright 2014, 2015 Richards Lindsay & Martin, L.L.P.



Public Schools of North Carolina

2
5

Programs

§ 504—OCR's Position on § 504 Services

"OCR has learned that some educators have the mistaken impression that placement options under Section 504 are limited to free or low-cost services, that provide limited, additional resources to students but may not be as robust or comprehensive as the special education and related services a student could receive under the IDEA." (*ADHD Resource Guide*, at p. 27)

Copyright 2014, 2015 Richards Lindsay & Martin, L.L.P.



Public Schools of North Carolina

Safeguards

- **§ 504**—General minimum safeguards
Notice, access to records, local grievance, impartial hearing, review procedure, OCR complaint
- **IDEA**—Loads of rights: detailed notice, mediation, "big" hearings, appeals to court, SEA complaints, OCR complaint

Copyright 2014, 2015 Richards Lindsay & Martin, L.L.P.



Public Schools of North Carolina

Post-Secondary Education

- **§ 504**—Applies to colleges and universities that receive federal funds
Reasonable accommodations only
- **IDEA**—Only applies to elementary and secondary public schools

Copyright 2014, 2015 Richards Lindsay & Martin, L.L.P.



Public Schools of North Carolina

2
6

Programs

§ 504—OCR's Position on § 504 Services

Question: If a § 504 child needs special education services such as those provided under IDEA, why would they not be IDEA-eligible?...

OCR likely wants no pre-set limitations on type of services available to § 504-only students

Copyright 2014, 2015 Richards Lindsay & Martin, L.L.P.



Public Schools of North Carolina

Non-FAPE Activities

- **§ 504**—Equal opportunity to access and participate in extracurricular and non-academic activities
Including reasonable accommodations needed for participation
- **IDEA**—Same (to mirror § 504 rights, except accommodations must be made part of IEP)

Copyright 2014, 2015 Richards Lindsay & Martin, L.L.P.



Public Schools of North Carolina

Mitigating Measures

- **§ 504**—Beneficial effect must not be considered in eligibility determination
Benefit of measures must be "subtracted" during eligibility determination
- **IDEA**—Eligibility determined "as is" (i.e., including impact of mitigating measure)

Copyright 2014, 2015 Richards Lindsay & Martin, L.L.P.



Public Schools of North Carolina

Episodic/Remission Conditions

- **§ 504**—Eligibility determined as if condition at its full-blown state

Watch for commonly episodic conditions...

- **IDEA**—Eligibility determined “as is” (i.e., impact of disability at time of evaluation)

Copyright 2014, 2015 Richards Lindsay & Martin, L.L.P.



Public Schools of North Carolina

- **Special education students with additional conditions aside from IDEA eligibility**

E.g., LD with diagnosis of ADHD and some behavior issues

§ 504 role? No. IEP team must address the student's behavior and full FAPE needs

There should never be both a § 504 committee and an IEP team for one child



Public Schools of North Carolina

Committee Decision-Making

- **§ 504** committees must include persons with knowledge of child, data, options

May vary depending on situation

Parent not required member (although most schools invite parents)

- **IDEA**—Firm IEP team with specifically required members and strict procedures

Copyright 2014, 2015 Richards Lindsay & Martin, L.L.P.



Public Schools of North Carolina

504 Plan Development

- Plans should be data driven
- Possible sources of evaluation data: teacher observations, scholastic record, report cards, work samples, state assessments, psychological evaluations (if available), norm referenced assessments, curriculum based assessments, academic or behavioral interventions, social and health history, parental information, teacher anecdotal notes and charting data (this list is not exhaustive)



Public Schools of North Carolina

34

504 Plans

Ensure the service, accommodation or adjustment is supported by evaluation data

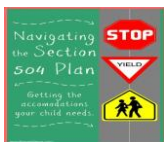
Accommodations for state assessments must be used regularly in the instructional program.

Ensure teachers understand the accommodations:

- Clarify terminology, e.g. preferential seating, extended time
- Provide training as necessary
- Check for fidelity of implementation

Write clear and specific accommodations:

- Avoid open-ended accommodations, and
- Avoid giving teachers discretion to implement



Public Schools of North Carolina

35

Developing a Plan for Services

Once eligibility has been determined, the Section 504 Committee develops a **Section 504 Services and Accommodations Plan**. The plan may include:

- **Accommodations** such as physical barrier removal, seating placement, extended time for testing, testing modifications, adjustment of class schedules, rest periods, use of supplemental aides (tape recorders, calculators, audio-visual equipment, computers, modified textbooks, etc.)
- **Services** such as medication administration, catheterization, special diet monitoring, allergy notifications and monitoring, service coordination, monitoring blood levels etc.



Public Schools of North Carolina

36

Collaborative Plan Development

- Return to groups of 3-4
- Review earlier "504 case"
- Develop 504 Accommodation Plan
- Describe how you would monitor fidelity of implementation
- Share with larger group

Note: Create faux data where needed and be clear and specific about needed accommodations



Q & A Session

