

Education Law

Definitions of Public School Discipline Practices -----page 2

- NCGS § 115C-390.1(b)(12) – Short-term suspensions
- NCGS § 115C-390.1(b)(7) – Long-term suspensions
- In-school suspensions
- Out-of-school suspensions
- NCGS § 115C-390.1(b)(1) – Alternative Learning Programs & exceptions

Exceptional Students and School Discipline -----page 5

- IDEA Sec. 615(k)(1)(B) – Individualized Educational Plan (IEP) procedural requirements
- IDEA Sec. 615(k)(4) – Manifestation Determination Review
- IDEA Sec. 615(k)(6) – Parental Appeal Rights

The Basic Special Education Process Under IDEA -----page 7

- 10 Steps to Basic Special Education
- IDEA Sec. 612(a)(3) – Child Find Provisions
- IDEA Sec. 614(a)(1) – Evaluation
- IDEA Sec. 614(a)(2) – Reevaluation
- IDEA Sec. 614(b) – Evaluation Procedures
- IDEA Sec. 615(b)(1) – Procedural Safeguard
- IDEA Sec. 614(d)(3) – IEP Development provisions
- IDEA Sec. 615(e) – Mediation Provisions
- IDEA Sec. 614(d)(4)(A)(i) – IEP Review at least once a year
- IDEA Sec. 614(d)(4)(A)(ii) – IEP Revision requirements
- IDEA Sec. 615(e) – Mediation Provisions
- IDEA Sec. 615(f) – Due Process Hearing Provisions
- IDEA Sec. 614(a)(2)(A) – Reevaluation at least every three years

Section 504 of the U.S. Rehabilitation Act of 1973 -----page 13

- 34 C.F.R. §104.1 – Purpose
- 34 C.F.R. §104.32 – Notification requirement
- 34 C.F.R. §104.36 – Procedural safeguards
- 34 C.F.R. §104.35(c) – Placement decisions

SCHOOL PLACEMENT CHANGE

These are definitions of public school discipline practices in North Carolina.

☐ **Short-term suspensions** are for less serious offenses and can last up to ten days. There is no legal right to appeal, but a school board may give students appeal rights.

§ 115C-390.1(b)(12) – definition – Short-term suspension. -The exclusion of a student from school attendance from disciplinary purposes for up to 10 school days from the school to which the student was assigned at the time of the disciplinary action.

§ 115C-390.5(a), (b) – policy (a) The principal shall have authority to impose short-term suspension on a student who willfully engages in conduct that violates a provision of the Code of Student Conduct authorizing short-term suspension.

(b) If a student's short-term suspensions accumulate to more than 10 days in a semester, to the extent the principal has not already done so, he or she shall invoke the mechanisms provided for in the applicable safe schools plan adopted pursuant to G.S.

115-C-105.47(b)(5) and (b)(6).

☐ **Long-term suspensions** last from a minimum of 11 days to a maximum of the days remaining in the school year. A student has the right to appeal. The appeal may be heard by the Superintendent, or the local Board of Education, or a Hearing Officer, or a Hearing Panel.

§ 115C-390.1(b)(7) – definition Long-term suspension. - The exclusion for more than 10 days of a student from school attendance for disciplinary purposes from the school to which the student was assigned at the time of the disciplinary action. If the offense leading to the longer-term suspension occurs before the final quarter of the school year, the exclusion shall be no longer than the remainder of the school year in which the offense was committed. If the offense leading to the long-term suspension occurs during the final quarter of the school year, the exclusion may include a period up to the remainder of the school year in which the offense was committed and the first semester of the following school year.

§ 115C-390.7 – policy

(a) A principal may recommend to the superintendent the long-term suspension of any student who willfully engages in conduct that violates a provision of the Code of Student Conduct that authorizes long-term suspension. Only the superintendent has the authority to long-term suspend a student.

(b) Before the superintendent's imposition of a long-term suspension, the student must be provided an opportunity for a hearing consistent with G.S. 115C-390.8.

(c) If the student recommended for long-term suspension declines the opportunity for a hearing, the superintendent shall review the circumstances of the recommended long-term suspension. Following such review, the superintendent (i) may impose the suspension if it is consistent with board policies and appropriate under the circumstances, (ii) may impose another appropriate penalty authorized by board policy, or (iii) may decline to impose any

penalty.

(d) If a teacher is assaulted or injured by a student and as a result the student is long-term suspended or reassigned to alternative education services, the student shall not be returned to that teacher's classroom unless the teacher consents.

(e) Disciplinary reassignment of a student to a full-time educational program that meets the academic requirements of the standard course of study established by the State Board of Education as provided in G.S. 115C-12 and provides the student with the opportunity to make timely progress towards graduation and grade promotion is not a long-term suspension requiring the due process procedures described in G.S. 115C-390.8. (2011-282, s. 2.)

☐ **In-school suspensions** are usually short-term suspensions served in an in-school suspension classroom.

☐ **Out-of-school suspensions** are suspensions that are served at a location other than school.

☐ **Alternative learning programs** are services for students at risk of being absent too often ("truant"), academic failure, behavior problems, or dropping out of school. The services are understood to better meet the needs of some students.

Alternative education services are part-time or full-time programs. The programs give students direct or computer-based instruction so that the students can progress in one or more core academic courses.

§ 115C-390.1(b)(1) – AES definition- Alternative education services. - Part or full-time programs, wherever situated, providing direct or computer-based instruction that allow a student to progress in one or more core academic courses. Alternative education services include programs established by the local board of education in conformity with G.S. 115C-105.47A and policies of the governing body of a public school unit.

► Students in general, alternative educational setting placement. Generally, schools must offer to place a student in an alternative educational setting (AES) when a student has a long- term suspension.

If the student is not offered AES placement, the student may appeal to the local Board of Education. *In turn, the superintendent shall provide to the student and the local board a written explanation for the denial of services along with supporting documents.*

§ 115C-390.9(b) If the superintendent declines to provide alternative education services to the suspended student, the student may seek review of such decision by the governing body of the public school unit as permitted by G.S. 115C-45(c)(2). If the student seeks such review, the superintendent shall provide to the student and the governing body, in advance of the governing body's review, a written explanation for the denial of services together with any documents or other information supporting the decision. (2011-282, s. 2; 2022-74, s. 7.7(g).)

Exceptions. A school superintendent may decline to offer AES placement in some situations. Those include:

- Services are not available in the local school administrative unit due to limited resources. § 115C-390.9(a)(5) Educationally appropriate alternative education services are not available in the public school unit due to limited resources.
- The student is violent or poses a threat to staff or other students. § 115C-390.9(a)(1) The student exhibits violent behavior, (2) The student poses a threat to staff or other students
- The student substantially disrupts the learning process. § 115C-390.9(a)(3)
- The student's behavior makes the provision of alternative educational services not feasible. § 115C-390.9(a)(4) The student otherwise engaged in serious misconduct that makes the provision of alternative educational services not feasible.
- The student did not meet conditions for admittance into an alternative education program. § 115C-390.9(a)(6) The student failed to comply with reasonable conditions for admittance into an alternative education program.

► **Exceptional students, interim or temporary placement.** School authorities can change the placement of a student who has disabilities. An exceptional student might be placed in a temporary, or Interim Alternative Educational Setting (IAES).

The exceptional student can continue with standard studies and work to meet Individualized Education Program (IEP) goals. An IAES placement may happen when the exceptional student:

- Has a short-term suspension, if an alternative setting is offered to all short-term suspended students
- Is found possessing or using drugs at school or a school controlled function.
- Is found in possession of a weapon, or carries a weapon to school or school function.

EXCEPTIONAL STUDENTS AND SCHOOL DISCIPLINE

When a student has been identified as having a disability and has an Individualized Educational Program (IEP), the student has extra legal rights in school discipline situations. (See also NCDPI [Policies Governing Services for Children with Disabilities](#))

► **If the student has been suspended for more than ten (10) consecutive days or a series of removals that equate to a change in placement, the IEP team must:**

- Meet within 10 working days of the disciplinary action.
- Work on a manifestation determination.
- Work on a functional behavioral assessment.
- Write a behavioral intervention plan as soon as they can.

IDEA Sec. 615(k)(1)(B) – General Procedural Requirement -Either before or not later than 10 days after taking a disciplinary action described in subparagraph (A) –

- (i) if the local educational agency did not conduct a functional behavioral assessment and implement a behavioral intervention plan for such child before the behavior that resulted in the suspension described in subparagraph (A), the agency shall convene an IEP meeting to develop an assessment plan to address that behavior; or
- (ii) (ii) if the child already has a behavioral intervention plan, the IEP Team shall review the plan and modify it, as necessary, to address the behavior.

IDEA Sec. 615(k)(4) – Manifestation Determination Review

(A) IN GENERAL- If a disciplinary action is contemplated as described in paragraph (1) or paragraph (2) for a behavior of a child with a disability described in either of those paragraphs, or if a disciplinary action involving a change of placement for more than 10 days is contemplated for a child with a disability who has engaged in other behavior that violated any rule or code of conduct of the local educational agency that applies to all children –

(i) not later than the date on which the decision to take that action is made, the parents shall be notified of that decision and of all procedural safeguards accorded under this section; and

(ii) immediately, if possible, but in no case later than 10 school days after the date on which the decision to take that action is made, a review shall be conducted of the relationship between the child's disability and the behavior subject to the disciplinary action.

(B) INDIVIDUALS TO CARRY OUT REVIEW- A review described in subparagraph (A) shall be conducted by the IEP Team and other qualified personnel.

(C) CONDUCT OF REVIEW- In carrying out a review described in subparagraph (A), the IEP Team may determine that the behavior of the child was not a manifestation of such child's disability only if the IEP Team –

(i) first considers, in terms of the behavior subject to disciplinary action, all relevant information, including –

(I) evaluation and diagnostic results, including such results or other relevant

information supplied by the parents of the child;
(II) observations of the child; and
(III) the child's IEP and placement; and
(ii) then determines that -- (I) in relationship to the behavior subject to disciplinary action, the child's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement.

■ **Manifestation Determination.** This is a review to find out whether the student's problem behavior is related to (a *manifestation of*) the disability.

If the IEP team finds that the behavior is **not** a manifestation of a disability:

- The school can take routine disciplinary action.
 - The IEP team determines what services will be given to the student.
- IDEA Sec. 615(k)(5) – Determination that behavior was Not Manifestation of Disability

(A) IN GENERAL- If the result of the review described in paragraph (4) is a determination, consistent with paragraph (4)(C), that the behavior of the child with a disability was not a manifestation of the child's disability, the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner in which they would be applied to children without disabilities, except as provided in section 612(a)(1).

(B) ADDITIONAL REQUIREMENT- If the public agency initiates disciplinary procedures applicable to all children, the agency shall ensure that the special education and disciplinary records of the child with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.

If the IEP team finds that the behavior **is** a manifestation of a disability:

- Suspension is not allowed.

■ **Appeal.** A student's guardian or parent may ask for a hearing if the guardian or parent disagrees with the determination or with the placement decision. The State or local education agency shall arrange for an expedited hearing in any case described in this subsection when requested by the guardian or parent.

IDEA Sec. 615(k)(6) – Parent Appeal

► If the student has been suspended for **less than ten (10) days**:

- The school may follow regular discipline rules.
- No action needs to take place that is related to special education due process.
- The IEP team may meet to consider the issues related to the suspension, and what might be done to support the student's progress.

■ **Appeal.** There is no formal right to appeal. A school Board might give students appeal rights.

The Basic Special Education Process Under IDEA

The writing of each student's IEP takes place within the larger picture of the special education process under IDEA. Before taking a detailed look at the IEP, it may be helpful to look briefly at how a student is identified as having a disability and needing special education and related services and, thus, an IEP.

Step 1. Child is identified as possibly needing special education and related services.

“Child Find.” The state must identify, locate, and evaluate all children with disabilities in the state who need special education and related services. To do so, states conduct “Child Find” activities. A child may be identified by “Child Find,” and parents may be asked if the “Child Find” system can evaluate their child. Parents can also call the “Child Find” system and ask that their child be evaluated. Or--

IDEA Sec. 612(a)(3) – Child Find Provisions IN GENERAL- All children with disabilities residing in the State, including children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

Referral or request for evaluation. A school professional may ask that a child be evaluated to see if he or she has a disability. Parents may also contact the child's teacher or other school professional to ask that their child be evaluated. This request may be verbal or in writing. Parental consent is needed before the child may be evaluated. Evaluation needs to be completed within a reasonable time after the parent gives consent.

Step 2. Child is evaluated.

The evaluation must assess the child in all areas related to the child's suspected disability. The evaluation results will be used to decide the child's eligibility for special education and related services and to make decisions about an appropriate educational program for the child. If the parents disagree with the evaluation, they have the right to take their child for an Independent Educational Evaluation (IEE). They can ask that the school system pay for this IEE.

IDEA Sec. 614(a)(1) – Evaluation- IN GENERAL- A State educational agency, other State agency, or local educational agency shall conduct a full and individual initial evaluation, in accordance with this paragraph and subsection (b), before the initial provision of special education and related services to a child with a disability under this part.

IDEA Sec. 614(a)(2) – Reevaluation-A local educational agency shall ensure that a reevaluation of each child with a disability is conducted -- (A) if conditions warrant a reevaluation or if the child's parent or teacher requests a reevaluation, but at least once every 3 years; and (B) in accordance with subsections (b) and (c).

IDEA Sec. 614(b) – Evaluation Procedures

(1) NOTICE- The local educational agency shall provide notice to the parents of a child with a disability, in accordance with subsections (b)(3), (b)(4), and (c) of section 615, that describes any evaluation procedures such agency proposes to conduct.

(2) CONDUCT OF EVALUATION- In conducting the evaluation, the local educational agency shall -- (A) use a variety of assessment tools and strategies to gather relevant functional and developmental information, including information provided by the parent, that may assist in determining whether the child is a child with a disability and the content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general curriculum or, for preschool children, to participate in appropriate activities; (B) not use any single procedure as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and (C) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

Step 3. Eligibility is decided.

A group of qualified professionals and the parents look at the child's evaluation results. Together, they decide if the child is a "child with a disability," as defined by IDEA.

Parents may ask for a hearing to challenge the eligibility decision.

IDEA Sec. 614(b)(4) – Determination made by qualified professionals and the parent

(4) DETERMINATION OF ELIGIBILITY- Upon completion of administration of tests and other evaluation materials -- (A) the determination of whether the child is a child with a disability as defined in section 602(3) shall be made by a team of qualified professionals and the parent of the child in accordance with paragraph (5); and (B) a copy of the evaluation report and the documentation of determination of eligibility will be given to the parent. (5) SPECIAL RULE FOR ELIGIBILITY DETERMINATION- In making a determination of eligibility under paragraph (4)(A), a child shall not be determined to be a child with a disability if the determinant factor for such determination is lack of instruction in reading or math or limited English proficiency.

Step 4. Child is found eligible for services.

If the child is found to be a "child with a disability," as defined by IDEA, he or she is eligible for special education and related services.

Once the student has been found eligible for services, the IEP must be written. The two steps below *summarize* what is involved in writing the IEP. This guide will look at these two steps in much greater detail in the following section.

Step 5. IEP meeting is scheduled.

The school system schedules and conducts the IEP meeting. School staff must:

- contact the participants, including the parents;
- notify parents early enough to make sure they have an opportunity to attend;
- schedule the meeting at a time and place agreeable to parents and the school;
- tell the parents the purpose, time, and location of the meeting;
- tell the parents who will be attending; and

- tell the parents that they may invite people to the meeting who have knowledge or special expertise about the child.

Step 6. IEP meeting is held and the IEP is written.

The IEP team gathers to talk about the child's needs and write the student's IEP. Parents and the student (when appropriate) are part of the team. If the child's placement is decided by a different group, the parents must be part of that group as well.

IDEA Sec. 615(b)(1) – Procedural Safeguard- (b) TYPES OF PROCEDURES-

The procedures required by this section shall include -- (1) an opportunity for the parents of a child with a disability to examine all records relating to such child and to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child;

IDEA Sec. 614(d)(3) – IEP Development provisions

Before the school system may provide special education and related services to the child for the first time, the parents must give consent. The child begins to receive services as soon as possible after the meeting.

If the parents do not agree with the IEP and placement, they may discuss their concerns with other members of the IEP team and try to work out an agreement. If they still disagree, parents can ask for mediation, or the school may offer mediation. Parents may file a complaint with the state education agency and may request a due process hearing, at which time mediation must be available.

IDEA Sec. 615(e) – Mediation Provisions-

(e) **MEDIATION-** (1) **IN GENERAL-** Any State educational agency or local educational agency that receives assistance under this part shall ensure that procedures are established and implemented to allow parties to disputes involving any matter described in subsection (b)(6) to resolve such disputes through a mediation process which, at a minimum, shall be available whenever a hearing is requested under subsection (f) or (k).

(2) **REQUIREMENTS-** Such procedures shall meet the following requirements:

(A) The procedures shall ensure that the mediation process -- (i) is voluntary on the part of the parties; (ii) is not used to deny or delay a parent's right to a due process hearing under subsection (f), or to deny any other rights afforded under this part; and (iii) is conducted by a qualified and impartial mediator who is trained in effective mediation techniques. (B) A local educational agency or a State agency may establish procedures to require parents who choose not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with -- (i) a parent training and information center or community parent resource center in the State established under section 682 or 683; or (ii) an appropriate alternative dispute resolution entity; to encourage the use, and explain the benefits, of the mediation process to the parents. (C) The State shall maintain a list of individuals who are qualified

mediators and knowledgeable in laws and regulations relating to the provision of special education and related services. (D) The State shall bear the cost of the mediation process, including the costs of meetings described in subparagraph (B). (E) Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute. (F) An agreement reached by the parties to the dispute in the mediation process shall be set forth in a written mediation agreement. (G) Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of such process.

Here is a brief summary of what happens after the IEP is written.

Step 7. Services are provided.

The school makes sure that the child's IEP is being carried out as it was written. Parents are given a copy of the IEP. Each of the child's teachers and service providers has access to the IEP and knows his or her specific responsibilities for carrying out the IEP. This includes the accommodations, modifications, and supports that must be provided to the child, in keeping with the IEP.

Step 8. Progress is measured and reported to parents.

The child's progress toward the annual goals is measured, as stated in the IEP. His or her parents are regularly informed of their child's progress and whether that progress is enough for the child to achieve the goals by the end of the year. These progress reports must be given to parents at least as often as parents are informed of their nondisabled children's progress.

Step 9. IEP is reviewed.

The child's IEP is reviewed by the IEP team at least once a year, or more often if the parents or school ask for a review. If necessary, the IEP is revised. Parents, as team members, must be invited to attend these meetings. Parents can make suggestions for changes, can agree or disagree with the IEP goals, and agree or disagree with the placement.

IDEA Sec. 614(d)(4)(A)(i) – IEP Review at least once a year- IN GENERAL- The local educational agency shall ensure that, subject to subparagraph (B), the IEP Team -- (i) reviews the child's IEP periodically, but not less than annually to determine whether the annual goals for the child are being achieved; and

IDEA Sec. 614(d)(4)(A)(ii) – IEP Revision requirements-(ii) revises the IEP as appropriate to address -- (I) any lack of expected progress toward the annual goals and in the general curriculum, where appropriate; (II) the results of any reevaluation conducted under this section; (III) information about the child provided to, or by, the parents, as described in subsection (c)(1)(B); (IV) the child's anticipated needs; or (V) other matters.

If parents do not agree with the IEP and placement, they may discuss their concerns with other members of the IEP team and try to work out an agreement. There are several options, including additional testing, an independent evaluation, or asking for mediation (if available) or a due process hearing. They may also file a complaint with the state education agency.

IDEA Sec. 615(e) – Mediation Provisions

(e) MEDIATION- (1) IN GENERAL- Any State educational agency or local educational agency that receives assistance under this part shall ensure that procedures are established and implemented to allow parties to disputes involving any matter described in subsection (b)(6) to resolve such disputes through a mediation process which, at a minimum, shall be available whenever a hearing is requested under subsection (f) or (k).

(2) REQUIREMENTS- Such procedures shall meet the following requirements: (A) The procedures shall ensure that the mediation process -- (i) is voluntary on the part of the parties; (ii) is not used to deny or delay a parent's right to a due process hearing under subsection (f), or to deny any other rights afforded under this part; and (iii) is conducted by a qualified and impartial mediator who is trained in effective mediation techniques. (B) A local educational agency or a State agency may establish procedures to require parents who choose not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with -- (i) a parent training and information center or community parent resource center in the State established under section 682 or 683; or (ii) an appropriate alternative dispute resolution entity; to encourage the use, and explain the benefits, of the mediation process to the parents. (C) The State shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services. (D) The State shall bear the cost of the mediation process, including the costs of meetings described in subparagraph (B). (E) Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute. (F) An agreement reached by the parties to the dispute in the mediation process shall be set forth in a written mediation agreement. (G) Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of such process.

IDEA Sec. 615(f) – Due Process Hearing Provisions

(1) IN GENERAL- Whenever a complaint has been received under subsection (b)(6) or (k) of this section, the parents involved in such complaint shall have an opportunity for an impartial due process hearing, which shall be conducted by the State educational agency or by the local educational agency, as determined by State law or by the State educational agency.

(2) DISCLOSURE OF EVALUATIONS AND RECOMMENDATIONS-

(A) IN GENERAL- At least 5 business days prior to a hearing conducted pursuant to paragraph (1), each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

(B) FAILURE TO DISCLOSE- A hearing officer may bar any party that

fails to comply with subparagraph (A) from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(3) LIMITATION ON CONDUCT OF HEARING- A hearing conducted pursuant to paragraph (1) may not be conducted by an employee of the State educational agency or the local educational agency involved in the education or care of the child.

Step 10. Child is reevaluated.

At least every three years the child must be reevaluated. This evaluation is often called a “triennial.” Its purpose is to find out if the child continues to be a “child with a disability,” as defined by IDEA, and what the child’s educational needs are. However, the child must be reevaluated more often if conditions warrant or if the child’s parent or teacher asks for a reevaluation.

IDEA Sec. 614(a)(2)(A) – Reevaluation at least every three years-

(2) REEVALUATIONS- A local educational agency shall ensure that a reevaluation of each child with a disability is conducted –

(A) if conditions warrant a reevaluation or if the child's parent or teacher requests a reevaluation, but at least once every 3 years; and

(B) in accordance with subsections (b) and (c).

SECTION 504 Education Plans

Section 504 of the U.S. Rehabilitation Act of 1973 is designed to help parents and guardians of public school students, or publicly funded private school students, who have physical or mental impairments.

The Act is intended to assist parents and guardians in working with educators to design customized educational plans. The 504 plans help ensure that students will be treated fairly at school.

Section 504 states, “No otherwise qualified individual with a disability in the United States, as defined in section 706(8) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.. .” [29 U.S.C. §794(a), 34 C.F.R. §104.4(a)]. No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance.

Section 504 plan basics. Students can qualify for 504 plans if they have physical or mental impairments that affect or limit any of their abilities to do the following:

- walk, breathe, eat, or sleep
 - communicate, see, hear, or speak
 - read, concentrate, think, or learn
 - stand, bend, lift, or work
- 34 C.F.R. §104.3(j)(2)(ii) – major life activities- means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

Examples of accommodations in 504 plans include:

- preferential seating
- extended time on tests and assignments
- reduced homework or classwork

- verbal, visual, or technology aids
- modified textbooks or audio-video materials
- behavior management support
- adjusted class schedules or grading
- verbal testing
- excused lateness, absence, or missed classwork
- pre-approved nurse's office visits and accompaniment to visits
- occupational or physical therapy

The goal of 504 plans is for students to be educated in regular classrooms and to receive the services, accommodations, or educational aids they might need. If students with these plans cannot achieve satisfactory academic success, as is determined by the school, then the school can consider alternative settings in the school or private or residential programs.

34 C.F.R. § 104.1 – Purpose—The purpose of this part is to effectuate section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

Section 504 plans are different from IEPs. A 504 plan is different from an individualized education program (IEP). The main difference is that a 504 plan modifies a student's regular education program in a regular classroom setting. Classroom teachers monitor a 504 plan.

As part of the Individuals with Disabilities Education Act (IDEA 2004), a student who has an IEP may receive different educational services in a special or regular educational setting, depending on the student's need. School staff and classroom teachers deliver and monitor IEP programs. A student's parent(s) or guardian is part of the IEP Team.

Who can refer a child for consideration for evaluation under Section 504? Anyone can refer a child for evaluation under Section 504. A guardian, parent, or doctor may make a referral. 34 C.F.R. §104.32 – notification requirement-A recipient that operates a public elementary or secondary education program or activity shall annually:

- (a) Undertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education; and
- (b) Take appropriate steps to notify handicapped persons and their parents or guardians of the recipient's duty under this subpart.

The US Department Education Office of Civil Rights (OCR) has stated in a staff memorandum that “the school district must also have reason to believe that the child is in need of services under Section 504 due to a disability” (OCR Memorandum, April 29, 1993). Therefore, a school district does not have to refer or evaluate a child under Section 504 solely upon parental demand.

The key to a successful referral is whether the school district staff believes that a child is suffering from a mental or physical impairment that substantially limits a major life activity, such that the child is in need of either regular education with supplementary services or special education and related services [letter to Mentink, 19 IDELR 1127 (OCR) 1993].

If a parent requests a referral for evaluation, and the school district refuses, the school district must provide the parent with notice of their procedural rights under Section 504.

34 C.F.R. §104.36 – procedural safeguards-A recipient that operates a public elementary or secondary education program or activity shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure.

Who decides whether a student is qualified and eligible for services under Section 504?

According to the federal regulations, “[P]lacement decisions are to be made by a group of persons who are knowledgeable about the child, the meaning of the evaluation data, placement options, least restrictive environment requirements, and comparable facilities”

[34 C.F.R. §104.35(c)(3)]. ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options

Unlike Special Education laws, the federal regulations for Section 504 do not require or even mention whether guardians or parents are to be a part of the decision-making committee. Each school district decides whether to include them in the decision-making committee. The district's procedures for implementing Section 504 should state whether parents and guardians are included in the committee.

Parents and guardians should at least be asked and encouraged to contribute any information that they may have (e.g., doctor's reports, outside testing reports, etc.) that would be helpful to the Section 504 Committee in making the determination of what the child may need.

Schools are expected to make sound educational decisions as to what a child needs in order to receive an appropriate education.

34 C.F.R. §104.35(c) – placement decisions shall draw upon a variety of info sources-

In interpreting evaluation data and in making placement decisions, a recipient shall (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior

What information is used in doing an evaluation under Section 504? Under Section 504, no formalized testing is required. The 504 Committee should look at the student's grades over the past several years, teachers' reports, information from parents and guardians, information from other agencies, state assessment scores or other school administered tests, observations, discipline reports, attendance records, health records and adaptive behavior information. Schools must consider a variety of information sources. A single source of information (such as a doctor's report) cannot be the only information considered. Schools must be able to ensure that all submitted information is documented and considered.

34 C.F.R. §104.35(c) – placement decisions shall draw upon a variety of info sources

Can a child be placed under Section 504 without notice to the parent or guardian? No.

Guardians and parents must be given notice before a child is evaluated or placed under Section 504 (34 C.F.R. §104.36). Guardians and parents must also be given a copy of the child's Section 504 accommodation plan if the committee determines that a child is eligible under Section 504.

Other rights: an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure.

[34 C.F.R. §104.36]

What types of accommodation will a child receive if she or he is found eligible under Section 504?

Each child's needs are determined individually. Determination of what is appropriate for each child is based on the nature of the child's disabling condition(s) and what that child needs in order to have an equal opportunity to compete, when compared to non-disabled students. There is no guarantee of A's or B's or even that the student will not fail. Students are expected to perform in school. The ultimate goal of education for all students, with or without disabilities, is to give students the knowledge and compensating skills they will need to be able to function in

life after graduation.

Accommodations that may be used include, but are not limited to the following:

- Highlighted textbooks
- Extended time on tests or assignments
- Peer assistance with note taking
- Frequent feedback
- Extra set of textbooks for home use
- Computer aided instruction
- Enlarged print
- Positive reinforcements
- Behavior intervention plans
- Rearranging class schedules
- Visual aids
- Preferred seating assignments
- Taping lectures
- Oral tests
- Individual contracts

Under Section 504, a parent or legal guardian has the right to:

- Receive notice regarding the identification, evaluation and/or placement of the child;
- Examine relevant records pertaining to the child;
- Request an impartial hearing with respect to the district's actions regarding the identification evaluation, or placement of the child, with an opportunity to participate in the hearing, to have representation by an attorney, and have a review procedure;
- File a complaint with the school District Section 504 Coordinator, who will investigate the allegations regarding Section 504 matters other than the child's identification, evaluation and placement.
- File a complaint with the appropriate regional Office for Civil Rights. For additional information, contact US Department of Education, Washington, D.C. 20202-1100
(800) 421-3481
www.ed.gov/ocr
E-mail: ocr@ed.gov

