

## 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 4

- 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 5

- 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 8

- 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

§ 115C-390.5(a), (b) – policy

☐ **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

§ 115C-390.7 – policy

☐ **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

► **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)

**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)

- The student is violent or poses a threat to staff or other students. § 115C-390.9(a)(1), (2)
- The student substantially disrupts the learning process. § 115C-390.9(a)(1)
- The student's behavior makes the provision of alternative educational services not feasible. § 115C-390.9(a)(4)
- The student did not meet conditions for admittance into an alternative education program. § 115C-390.9(a)(6)

► ***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.

(Rev. 10.22.14)

## 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.

► If the student has been suspended for **more than ten (10) days**, 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  
IDEA Sec. 615(k)(4) – Manifestation Determination Review

▣ **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

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 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**

*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**

**IDEA Sec. 614(a)(2) – Reevaluation**

**IDEA Sec. 614(b) – Evaluation Procedures**

### **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**

### **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**

**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**

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**

**IDEA Sec. 614(d)(4)(A)(ii) – IEP Revision requirements**

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**

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

**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**

## **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)].

**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

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



**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**

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**

**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)].

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**

**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](http://www.ed.gov/ocr)  
E-mail: [ocr@ed.gov](mailto:ocr@ed.gov)

## **PERSONALIZED EDUCATION PLANS**

Personalized Education Plan was Originally in § 115C-105.4(a), but seems like this entire section of North Carolina General Statutes has been repealed by session laws 1997-443, s. 8.27(c).

All students in North Carolina public schools have a Constitutional right to a sound basic education. Students have the right to extra help when they are at risk for poor school performance, and when they perform below grade level. There is no cost to you for the extra help. The extra help is a Personalized Education Plan (PEP).

- ▶ A student who *performs below grade level* has the right to a PEP.
- ▶ A student who is *at risk for academic failure or performing below grade level* has the right to a PEP. Students who score a **1 or 2** on the End of Grade or End of Course tests may ask for a PEP. Write to the school principal to ask for a PEP. Keep a photocopy of your letter.

### **The Personalized Education Plan includes the following.**

- *Diagnostic Evaluation*: Testing to see what difficulties the student may have, in order to learn what will best help the student.
- *Intervention Strategies*: Help from the school for the student.
  - Different learning models;
  - Smaller classes;
  - Tutor sessions;
  - Different instruction programs;
  - More action by a guardian or parent;
  - Best practices that meet the needs of similar students.
- *Monitoring Strategies*: Parents and teachers check on the situation to make sure that a student's PEP is actually working.
- These resources, including transportation, are available *free of charge*.

All children can succeed. PEPs help students get the education they need and deserve.

(Rev. 10.22.14)

Educ. 1-S: Sample letter to principal requesting PEP

Date: \_\_\_\_\_

Your Name  
Your Street Address  
City, State, Zip Code

Principal: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear \_\_\_\_\_:

I am writing to ask for a Personalized Education Plan (PEP) for \_\_\_\_\_  
\_\_\_\_\_. My child is performing below grade level on the year-end tests.

Under North Carolina law, all students performing below grade level are entitled to a PEP. I would like for \_\_\_\_\_ to be scheduled for a diagnostic test as soon as possible.

Please let me know about what is available. I may be reached by telephone during school hours at \_\_\_\_\_. I may be reached after school hours at \_\_\_\_\_. Please leave a message with \_\_\_\_\_ if you call and I am not able to talk with you.

Thank you for your kind attention and help.

Sincerely,

\_\_\_\_\_  
Guardian or Parent

(Rev. 10.22.14)