Proposed 2014 Revisions to
NC *Policies Governing Services to Children with Disabilities*

(Page numbers refer to hard copy of NC Policies, Amended October 2013)

Page	Change	Comment
3	Amend definition of Autism	Aligns definition of Autism with the IDEA regulations and with the definition in the Diagnostic Statistical Manual V (DSM V). The change removes the various other diagnoses associated with Autism and uses only the broad category of Autism, which may be inclusive of these diagnoses.
41-42	Change the language related to the requirements for obtaining parents' consent to access their public insurance.	The United States Department of Education issued new regulations related to obtaining parents' consent to access their public insurance.
44-45	Remove language related to the requirements of the Modified Achievement Standard	The North Carolina ESEA waiver eliminates the Modified Achievement Standard effective the 2014-2015 school year. Additionally, the United States Department of Education (USDOE) has proposed regulations that will eliminate the Modified Achievement Standard.
77-78	" Remove language related to the requirements of the Modified Achievement Standard	The North Carolina ESEA waiver eliminates the Modified Achievement Standard effective the 2014-2015 school year. Additionally, the United States Department of Education (USDOE) has proposed regulations that will eliminate the Modified Achievement Standard.

NC 1500-2.4 Child with a disability

(a) General

(1) Child with a disability means a child evaluated in accordance with NC 1503-2 through NC 1503-3 as having autism, deaf-blindness, deafness, developmental delay (applicable only to children ages three through seven), hearing impairment, intellectual disability, multiple disabilities, orthopedic impairment, other health impairment, serious emotional disability, specific learning disability, speech or language impairment, traumatic brain injury, or visual impairment (including blindness), and who, by reason of the disability, needs special education and related services.

(2) (i) If it is determined, through an appropriate evaluation under NC 1503-2 through NC 1503-3, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, the child is not a child with a disability under IDEA.

(ii) If the only service required by the child is speech language, it is considered special education rather than a related service and the child would be determined to be a child with a disability under paragraph (a)(1) of this section.

(b) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

(1) Autism, sometimes called autism spectrum disorder,

~~(i)~~ means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotypical movements, restricted interests, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. ~~This impairment may include: Autistic Disorder, Pervasive Developmental Disorder-Not Otherwise Specified (Atypical Autism), Asperger's Disorder, Rett's Disorder, Childhood Disintegrative Disorder or all Pervasive Developmental Disorders.~~

(ii) Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disability, as described in paragraph (b)(5) of this section.

(iii) A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in paragraph (i) of this section are satisfied.

(2) Deaf-blindness means hearing and visual impairments that occur together, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

(3) Deafness means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification that adversely affects the child's educational performance.

(4) Developmental delay means a child aged three through seven, whose development and/or behavior is delayed or atypical, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development, and who, by reason of the delay, needs special education and related services.

(5) Serious emotional disability (hereafter referred to as emotional disability)

(i) means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

special education or related services (such as, but not limited to, services described in NC 1500-2.2 relating to assistive technology devices, NC 1500-2.3 relating to assistive technology services, NC 1500-2.26 relating to related services, NC 1500-2.33 relating to supplementary aids and services, and NC 1500-2.34 relating to transition services) that are necessary for ensuring FAPE to children with disabilities within the State, the public agency must fulfill that obligation or responsibility, either directly or through contract or other arrangement pursuant to paragraph (a) of this section or an agreement pursuant to paragraph (c) of this section.

(ii) A noneducational public agency described in paragraph (b)(1)(i) of this section may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context.

(2) If a public agency other than an educational agency fails to provide or pay for the special education and related services described in paragraph (b)(1) of this section, the LEA (or State agency responsible for developing the child's IEP) must provide or pay for these services to the child in a timely manner. The LEA or State agency is authorized to claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services and that agency must reimburse the LEA or State Agency in accordance with the terms of the interagency agreement or other mechanism described in paragraph (a) of this section.

(c) Special rule. The requirements of paragraph (a) of this section are met through –

(1) State statute or regulation;

(2) Signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or

(3) Other appropriate written methods as determined by Governor or designee of that officer and approved by the Secretary.

(d) Children with disabilities who are covered by public benefits or insurance.

(1) A public agency may use the Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services required under these Policies, as permitted under the public benefits or insurance program, except as provided in paragraph (d)(2) of this section.

(2) With regard to services required to provide FAPE to an eligible child, the public agency -

(i) May not require parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive FAPE under Part B of the IDEA;

(ii) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this part, but pursuant to paragraph (g)(2) of this section, may pay the cost that the parent otherwise would be required to pay;

(iii) May not use a child's benefits under a public benefits or insurance program if that use would--

(A) Decrease available lifetime coverage or any other insured benefit;

(B) Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school;

(C) Increase premiums or lead to the discontinuation of insurance; or

(D) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures; and

~~(iv) (A) Must obtain, at least annually and/or in conjunction with major modifications to the IEP, parental consent, consistent with NC 1500-2.5, each time that access to public benefits or insurance is sought; and~~

(iv) Prior to accessing a child's or parent's public benefits or insurance for the first time,

and after providing notification to the child's parents consistent with paragraph (d)(2)(v) of this section, must obtain written, parental consent that –

(A) Meets the requirements of § 99.30 of this title and NC1505-2.13, which consent must specify the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to a particular child), the purpose of the disclosure (e.g., billing for services under these policies), and the agency to which the disclosure may be made (e.g., the State's public benefits or insurance program (e.g., Medicaid)); and

~~(B) Notify parents that the parents' refusal to allow access to their public benefits or insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.~~

(B) Specifies that the parent understands and agrees that the public agency may access the parent's or child's public benefits or insurance to pay for services under these policies

(v) Prior to accessing a child's or parent's public benefits or insurance for the first time, and annually thereafter, must provide written notification, consistent with NC 1504-1.4 (c), to the child's parents, that includes—

(A) A statement of the parental consent provisions in paragraphs (d)(2)(iv)(A) and (B) of this section;

(B) ~~Notify parents that the parents' refusal to allow access to their public benefits or insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.~~

(B) A statement of the "no cost" provisions in paragraphs (d)(2)(i) through (iii) of this section;

(C) A statement that the parents have the rights under 34 CFR part 99 and these policies to withdraw their consent to disclosure of their child's personally identifiable information to the agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid) any time; and

(D) A statement that the withdrawal of consent or refusal to provide consent under 34 CFR -part 99 and these policies to disclose personally identifiable information to the agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid) does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

(iv) ~~Must obtain, at least annually and/or in conjunction with major modifications to the IEP, parental consent, consistent with NC 1500-2.5, each time that access to public benefits or insurance is sought; and~~

(e) Children with disabilities who are covered by private insurance.

(1) With regard to services required to provide FAPE to an eligible child under these Policies, a public agency may access a parent's private insurance proceeds only if the parent provides informed consent consistent with NC 1500-2.5.

(2) Each time the public agency proposes to access the parent's private insurance proceeds, the agency must -

(i) Obtain parental consent in accordance with paragraph (e)(1) of this section; and

(ii) Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

(f) Use of Part B funds.

(1) If a public agency is unable to obtain parental consent to use the parent's private insurance, or public benefits or insurance when the parent would incur a cost for a specified service

ESEA, 20 U.S.C. 6311, with appropriate accommodations and alternate assessments, if necessary, as indicated in their respective IEPs.

(b) Accommodation guidelines.

(1) The State (or, in the case of a district-wide assessment, an LEA) must develop guidelines for the provision of appropriate accommodations.

(2) The State's (or, in the case of a district-wide assessment, the LEA's) guidelines must--

(i) Identify only those accommodations for each assessment that do not invalidate the score; and

(ii) Instruct IEP Teams to select, for each assessment, only those accommodations that do not invalidate the score.

(c) Alternate assessments.

(1) The State (or, in the case of a district-wide assessment, an LEA) must develop and implement alternate assessments and guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments, even with accommodations, as indicated in their respective IEPs, as provided in paragraph (a) of this section.

(2) For assessing the academic progress of students with disabilities under Title I of the ESEA, the alternate assessments and guidelines in paragraph (c)(1) of this section must provide for alternate assessments that--

(i) Are aligned with the State's challenging academic content standards and challenging student academic achievement standards; and

~~(ii) If the State has adopted modified academic achievement standards permitted in 34 CFR §200.1(e), measure the achievement of children with disabilities meeting the State's criteria under §200.1(e)(2) against those standards; and~~

~~(iii)~~ (ii) If the State has adopted alternate academic achievement standards permitted in 34 CFR §200.1(d), measure the achievement of children with the most significant cognitive disabilities against those standards.

(d) Explanation to IEP Teams. The State (or in the case of a district-wide assessment, an LEA) must provide IEP Teams with a clear explanation of the differences between assessments based on grade-level academic achievement standards and those based on modified or alternate academic achievement standards, including any effects of State or local policies on the student's education resulting from taking an alternate assessment based on alternate or modified academic achievement standards (such as whether only satisfactory performance on a regular assessment would qualify a student for a regular high school diploma).

(e) Inform parents. The State (or in the case of a district-wide assessment, an LEA) must ensure that parents of students selected to be assessed based on alternate ~~or modified academic~~ achievement standards are informed that their child's achievement will be measured based on alternate ~~or modified~~ academic achievement standards.

(f) Reports. The SEA (or, in the case of a district-wide assessment, an LEA) must make available to the public, and report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:

(1) The number of children with disabilities participating in regular assessments, and the number of those children who were provided accommodations (that did not result in an invalid score) in order to participate in those assessments.

(2) The number of children with disabilities, if any, participating in alternate assessments based on grade-level academic achievement standards.

~~(3) The number of children with disabilities, if any, participating in alternate assessments based on modified academic achievement standards.~~

~~(4)~~ (3) The number of children with disabilities, if any, participating in alternate assessments based on alternate academic achievement standards.

~~(5)~~ (4) Compared with the achievement of all children, including children with disabilities, the performance results of children with disabilities on regular assessments, alternate assessments based on grade-level academic achievement standards, ~~alternate assessments based on modified academic achievement standards,~~ and alternate assessments based on alternate academic achievement standards if--

(i) The number of children participating in those assessments is sufficient to yield statistically reliable information; and

(ii) Reporting that information will not reveal personally identifiable information about an individual student on those assessments.

(g) Universal design. The SEA (or, in the case of a district-wide assessment, an LEA) must, to the extent possible, use universal design principles in developing and administering any assessments under this section.

(Authority: 20 U.S.C. 1412(a)(16); 34 CFR 300.160)

NC 1501-12.5 Supplementation of State, local, and other Federal funds

(a) Expenditures. Funds paid to the State under this part must be expended in accordance with all the provisions of this part.

(b) Prohibition against commingling.

(1) Funds paid to the State under this part must not be commingled with State funds.

(2) The requirement in paragraph (b)(1) of this section is satisfied by the use of a separate accounting system that includes an audit trail of the expenditure of funds paid to the State under this part. Separate bank accounts are not required. (See 34 CFR 76.702 (Fiscal control and fund accounting procedures)).

(c) State-level nonsupplanting.

(1) Except as provided in NC 1502-3, funds paid to the State under Part B of the IDEA must be used to supplement the level of Federal, State, and local funds (including funds that are not under the direct control of the SEA or LEAs) expended for special education and related services provided to children with disabilities under Part B of the IDEA, and in no case to supplant those Federal, State, and local funds.

(2) If the State provides clear and convincing evidence that all children with disabilities have available to them FAPE, the Secretary may waive, in whole or in part, the requirements of paragraph (c)(1) of this section if the Secretary concurs with the evidence provided by the State under NC 1501-12.7.

(Authority: 20 U.S.C. 1412(a)(17); 34 CFR 300.162; 115C-111.6)

NC 1501-12.6 Maintenance of State financial support

(a) General. The State must not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.

(b) Reduction of funds for failure to maintain support. The Secretary reduces the allocation of funds under section 611 of the IDEA for any fiscal year following the fiscal year in which the State fails to comply with the requirement of paragraph (a) of this section by the same amount by which the State fails to meet the requirement.

(c) Waivers for exceptional or uncontrollable circumstances. The Secretary may waive the requirement of paragraph (a) of this section for the State, for one fiscal year at a time, if the Secretary determines that -

(3) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;
(4) The educationally relevant medical findings, if any;
(5) Whether –
  (i) The child does not achieve adequately for the child's age, intellectual development or to meet State-approved grade-level standards consistent with NC 1503-3.3(a); and
  (ii) (A) The child does not make sufficient progress to meet age or State-approved grade-level standards consistent with NC 1503-3.3(a); or
  (B) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade level standards or intellectual development consistent with NC 1503-3.3(a).
(6) The determination of the group concerning the effects of a visual, hearing, or motor disability; intellectual disability; emotional disability; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and
(7) If the child has participated in a process that assesses the child's response to scientific, research-based intervention –
  (i) The instructional strategies used and the student-centered data collected; and
  (ii) The documentation that the child's parents were notified about –
    (A) The State's policies regarding the amount and nature of student performance data collected and the general education services that would be provided;
    (B) Strategies for increasing the child's rate of learning; and
    (C) The parent's right to request an evaluation.

(b) Each group member shall certify in writing whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the group member must submit a separate statement presenting his or her conclusions.

(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6); 34 CFR 300.311)

NC 1503-4 Individualized Education Programs

NC 1503-4.1 Definition of individualized education program

(a) General. As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with NC 1503-4.1 through NC 1503-5.1, and that must include--
(1) A statement of the child's present levels of academic achievement and functional performance, including--
  (i) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or
  (ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;
(2) (i) A statement of measurable annual goals, including academic and functional goals designed to --
    (A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and
    (B) Meet each of the child's other educational needs that result from the child's disability.
  (ii) For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;

(iii) ~~For children with disabilities who take alternate assessments based on modified achievement standards, measurable goals aligned to grade level content standards for the student's assigned grade level.~~

(3) A description of--

(i) How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and

(ii) That periodic reports on the progress the child is making toward meeting the annual goals will be provided concurrent with the issuance of report cards;

(4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child--

(i) To advance appropriately toward attaining the annual goals;

(ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and

(iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;

(5) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(4) of this section;

(6) (i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 612(a)(16) of the IDEA; and

(ii) If the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or districtwide assessment of student achievement, a statement of why--

(A) The child cannot participate in the regular assessment; and

(B) The particular alternate assessment selected is appropriate for the child; and

(7) The projected date for the beginning of the services and modifications described in paragraph (a)(4) of this section, and the anticipated frequency, location, and duration of those services and modifications.

(b) Transition services.

(1) Beginning not later than the first IEP to be in effect when the child turns 14, or younger if determined appropriate by the IEP Team, and updated annually thereafter, the IEP must include a statement of initial transition components including the child's needs, preferences and interests, and course(s) of study (such as advanced placement classes or a vocational education program).

(2) Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include –

(i) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and

(ii) The transition services needed to assist the child in reaching those goals, including if appropriate, a statement of interagency responsibilities or any needed linkages.

(c) Transfer of rights at age of majority. Beginning not later than one year before the child reaches the age of majority, which under State law is 18, the IEP must include a statement that the child and their parent have been informed of the rights under Part B of the IDEA, that will transfer to the child upon reaching age 18.