

66TH CONFERENCE ON EXCEPTIONAL CHILDREN

# Never Underestimate the Power of § 504

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**SELF-ASSESSMENT:**     
**A Journey of Change**

PUBLIC SCHOOLS OF NORTH CAROLINA  
State Board of Education | Department of Public Instruction

November 8-10, 2016

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## Why should I care about § 504?



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### A little background information:

- Part of the Rehabilitation Act of 1973
- Civil rights law – Prohibits discrimination based on disability
- Applies to any programs and activities that receive financial assistance from the U.S. Department of Education
- Applies to “students with disabilities”

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### Who does § 504 protect?

A “qualified student with a disability”

- Student must have a physical or mental impairment that “substantially limits” one or more major life activities; OR
- have a record of such impairment; OR
- be regarded as having such an impairment.

*Remember: “substantially limits” does NOT require that the student cannot do the task at all.*

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### Physical or mental impairment

Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems:

neurological	musculoskeletal
special sense organs	respiratory, including speech organs
cardiovascular	reproductive
digestive	genitourinary
hemic and lymphatic	skin & endocrine

any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, or specific learning disabilities.

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### Major Life Activities

Caring for one's self	Performing manual tasks
Walking	Seeing
Hearing	Speaking
Breathing	Learning
Working	There's more . . .

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### Major Life Activities (cont.)

Sleeping	Standing
Lifting	Bending
Reading	Concentrating
Thinking	Communicating
Eating	This list is not exhaustive.

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## Section 504 Ensures ACCESS

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“No otherwise qualified individual with a disability in the United States . . . 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 . . . .”

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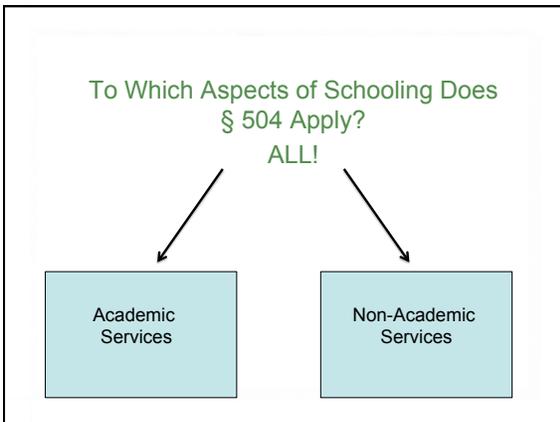
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A school district's legal obligation to comply with Section 504 "supersedes any rule of any association, organization, club, or league that would render a student ineligible to participate or limit the eligibility of a student to participate" in an athletic team or event.

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### What qualifies as discrimination?



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### Prohibited discriminatory actions:

- Denial of the opportunity to participate in or benefit from an aid, benefit, or service;
- Affording an opportunity to participate in or benefit from an aid, benefit, or service that is not equal to that afforded to others;
- Providing an aid, benefit, or service that is not as effective as that provided to others;

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### Prohibited discriminatory actions (cont.):

- Providing different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are **as effective as** those provided to others;

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### Prohibited discriminatory actions (cont.):

- Aiding or perpetuating discrimination by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program or activity;

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### Prohibited discriminatory actions (cont.):

- Denial of the opportunity to participate as a member of planning or advisory boards; or
- Otherwise limiting a qualified disabled person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

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### For clarification:

For aids, benefits, and services to be equally effective, they are not required to produce the *identical result* or level of achievement for disabled and non-disabled persons, but . . .

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### Equally Effective

They must afford disabled persons *equal opportunity* to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.

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### Even if "separate" is available:

A school district *may not deny* a disabled person the opportunity to participate in such aid, benefits, or services that are not separate or different.

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## Free Appropriate Public Education (FAPE)

The Section 504 regulations require a school district to provide a FAPE to each qualified student with a disability who is in the school district's jurisdiction, regardless of the nature or severity of the disability.

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## FAPE (cont.):

- FAPE consists of the provision of regular or special education and related aids and services designed to meet the student's individual educational needs as adequately as the needs of non-disabled students are met.

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## Common Misconceptions about § 504



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- The major life activity does NOT have to be learning for a child to be eligible for a Section 504 Plan.
- Except eyeglasses and contact lenses, mitigating measures cannot be considered when determining whether a person has a substantially limiting impairment.
- The Section 504 Team must consider if without the mitigating measure would the student's disability substantially limit a major life activity.

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### Ex. of Mitigating Measures

Medication	Medical Supplies	Equipment or Appliances
Low-vision Devices (which do NOT include ordinary eyeglasses or contact lenses)	Prosthetics (including limbs and devices)	Hearing Aids, Cochlear Implants, or Implantable Hearing Devices
Mobility Devices	Oxygen Therapy Equipment	Use of Assistive Technology
Reasonable Accommodations	Auxiliary Aids or Services	Learned Behavioral or Adaptive Neurological Modifications

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- A health care plan does not take the place of a § 504 Plan.
- Temporary (?) impairments can warrant a § 504 Plan
  - Not a disability “unless its severity is such that it results in a substantial limitation of one or more major life activities for an extended period of time.”

A Section 504 Plan is not a “consolation prize” to an IEP; however, a student who is not eligible under the IDEA should be considered under Section 504.

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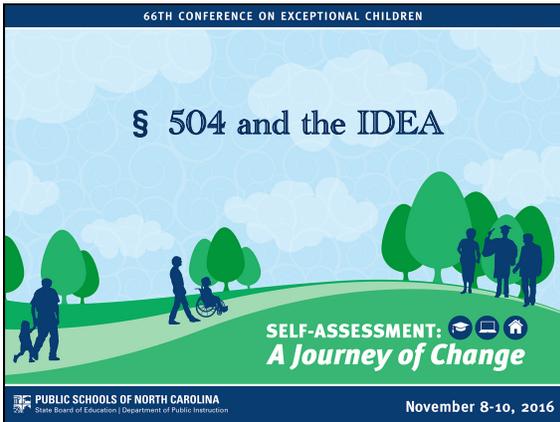
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### Funding

<b>§ 504</b> <ul style="list-style-type: none"><li>• No federal funding</li><li>• Anti-discrimination statute</li></ul>	<b>IDEA</b> <ul style="list-style-type: none"><li>• Federal funding provided upon the condition of complying with the IDEA.</li></ul>
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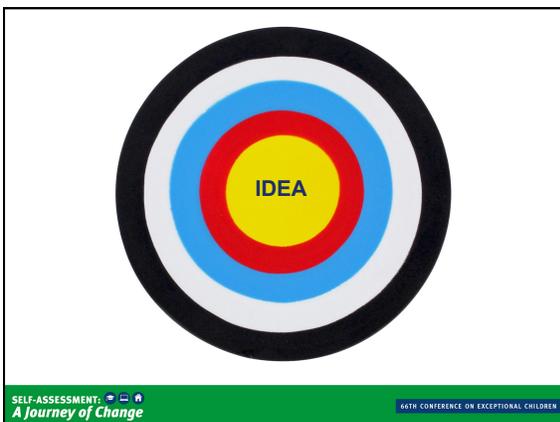
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### Procedural Safeguards

- § 504
  - Fewer procedural safeguards than the IDEA.
  - District must establish a system of procedural safeguards
- IDEA
  - Contains a detailed list of procedural safeguards included in the statute.

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### § 504 Procedural Safeguards

- Notice;
- Opportunity to examine relevant records;
- Impartial hearing with opportunity for participation by parents and representation by counsel; and
- Appeal Procedure

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### How long does a student have these rights?

- § 504
  - Continues into college, graduate school, professional school
- IDEA
  - Ends at high school graduation or age 21 if student is on a non-diploma track

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### Evaluation

<b>§ 504</b> <ul style="list-style-type: none"><li>• School or parent can initiate a referral</li><li>• LEA establishes standards and procedures for evaluation &amp; placement</li><li>• No specific timeline, must be “reasonable” per OCR</li></ul>	<b>IDEA</b> <ul style="list-style-type: none"><li>• School or parent can initiate a referral</li><li>• IDEA establishes standards and procedures for evaluation &amp; placement</li><li>• 90 days in North Carolina</li></ul>
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### Evaluation (cont.)

<b>§ 504</b> <ul style="list-style-type: none"><li>• School district cannot require parent to pay for evaluation.</li><li>• LEA must set up procedures for “periodic reevaluation”</li></ul>	<b>IDEA</b> <ul style="list-style-type: none"><li>• School district cannot require parent to pay for evaluation.</li><li>• Reevaluation period every 3 years.</li></ul>
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### Residential Placement § 504

- If a public or private residential placement is necessary to provide a FAPE to a disabled person due to the disability, the placement, including non-medical care and room and board, shall be provided at no cost to the person or his or her parents guardian. 34 C.F.R. § 104.33(b)(3).

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### Least Restrictive Environment § 504

- “A recipient **shall place** a handicapped person in the regular educational environment operated by the recipient **unless it is demonstrated** by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily.” 34 C.F.R. § 104.34(a).

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## Accommodations

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### Testing Accommodations § 504

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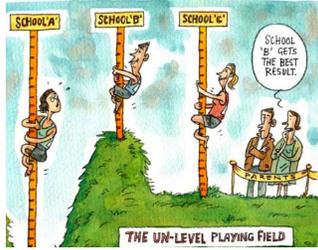
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## Testing Accommodations § 504 (continued)

Must be reasonable & limited to the need for the requested accommodation

- Use of spell check NOT appropriate for spelling test.



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## Undue Burden

- Districts are not required to provide an accommodation that would impose an undue hardship (34 C.F.R. § 104.12(a))
- What is NOT an undue burden?
  - Providing interpreters
  - Installing wheelchair lifts on school buses

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## Technology

Technology in the class must be fully accessible OR provide equal access to the educational benefits & opportunities afforded by the technology.



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# Bullying

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## OCR Dear Colleague Letter (October 21, 2014)

- Bullying of a student with a disability can result in a denial of FAPE.
- Schools have an affirmative obligation to address conduct that may constitute disability-based harassment & remedy the denial of FAPE.

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### Disability-based harassment under § 504 & Title II



- Student is bullied based on disability
- Bullying is sufficient to create a hostile environment
- School officials knew or should have known about the bullying
- School does not respond appropriately

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### Section 504 Legal Strategies

Section 504 Due Process  
OCR Complaint  
Federal court  
Money damages available

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### Questions?



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