

# Eliminating Bullying for Students with Disabilities



# Council for Children's Rights

## Disclaimer

The information provided in this training does not, and is not intended to, constitute legal advice. Instead, all information is provided for general informational purposes only.

# What We Do

- \* Education Advocacy for Individual Families
  - \* Individual representation for students and their legal guardians in need of legal assistance regarding special education, Section 504 Plans, and school discipline.
  - \* Families can contact [gethelp@cfcrights.org](mailto:gethelp@cfcrights.org) or 704-943-9609 for assistance.
- \* Education Navigation
  - \* A service centered on students involved in the juvenile court of Mecklenburg County that is intended to address issues related to their education rights, such as inappropriate disciplinary actions, inadequate IEPs or Section 504 Plans (or a total lack thereof), charter schools failing to meet a student's needs, etc.
  - \* Families can contact [ELP@cfcrights.org](mailto:ELP@cfcrights.org) or 704-943-9611 for assistance.
- \* Systemic Advocacy
  - \* As a small team, we cannot individually assist every family that needs support with education advocacy. By devoting time to strategically elevating significant issues affecting many students, our work can have a greater community impact.
- \* Community Trainings
  - \* We offer free trainings to community partners and parent groups. Our trainings cover a range of topics related to education advocacy.
  - \* Interested parties can contact [ELP@cfcrights.org](mailto:ELP@cfcrights.org) or 704-372-7961.

# Agenda

- \* 2 Quick Notes
- \* Overview of Types of Education Interventions
- \* General Overview of Bullying
- \* Eliminating Bullying for Students with Disabilities

# Two Quick Notes!

# Special Education, aka:

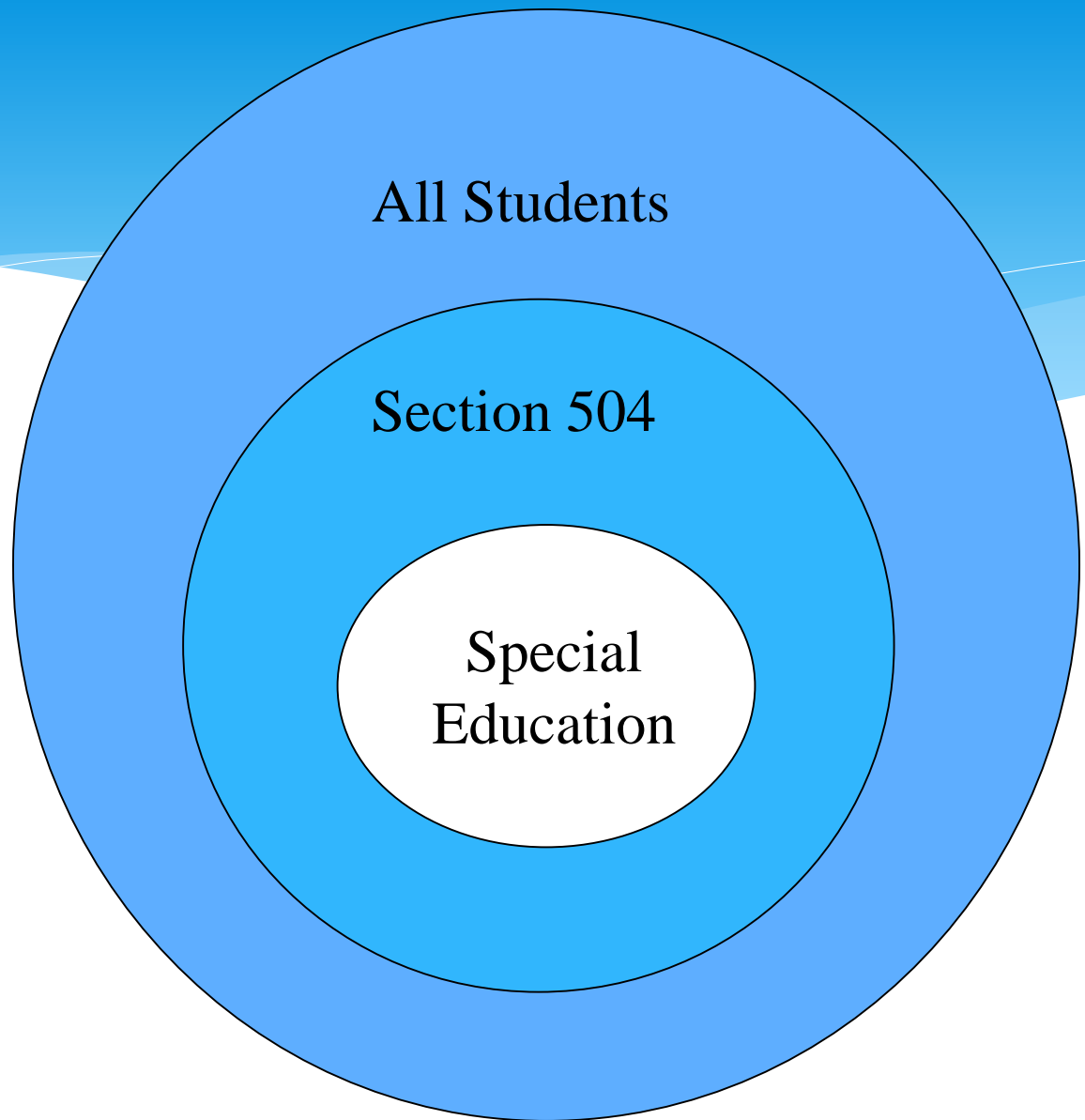
- \* The terms “Individualized Education Program” (IEP), “Exceptional Children” (EC), and “Special Education” are often used to refer to the same thing and may be considered interchangeable for the purpose of this training
- \* EC services = IEP services = Special Education

# Charter Schools

- \* Everything discussed in this training applies to charter schools, as well as traditional public school systems
- \* Charters must:
  - \* Follow NC and federal law for special education and Section 504 Plans, and
  - \* Follow NC law on school discipline

# Overview of Types of Education Interventions

- \* All Students:
  - \* Intervention Team/Multi-Tiered System of Support (MTSS)
- \* Students with disabilities:
  - \* Section 504
  - \* Special Education



# Multi-Tiered System of Support (MTSS)

## A Regular Education Initiative

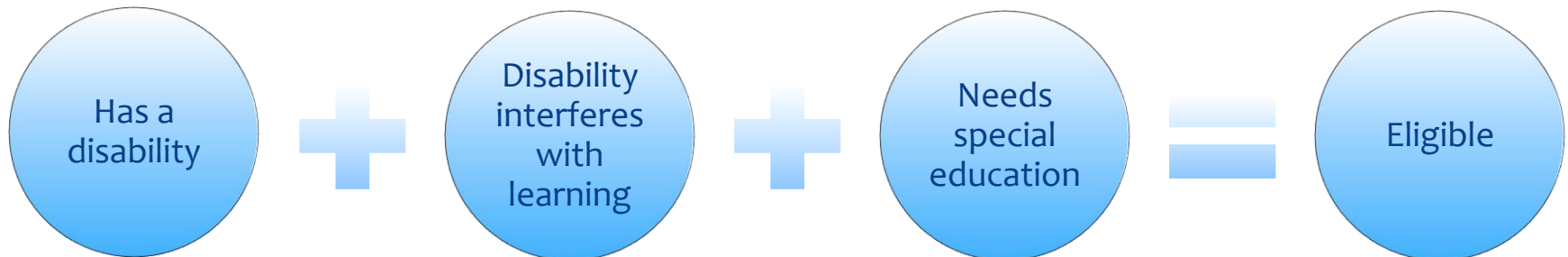
- \* Tier 1
  - \* All students receive the same academic instruction
- \* Tier 2
  - \* Tier 1 Services, plus
  - \* Small Group Intervention
  - \* May include increased time for assignments or more narrowly focused instruction
- \* Tier 3
  - \* Tier 1 & 2 Services, plus
  - \* Intensive, Individualized Supports
  - \* Likely includes progress monitoring, 1:1 instruction, and “wrap-around” services

# MTSS

- \* Key Components
  - \* High quality instruction (Tier 1 - All students)
  - \* Universal screening to identify students in need of supplemental support (Tier 1 - All students)
  - \* Multiple tiers of academic and behavioral support that are progressively more intensive (Tier 2)
  - \* Evidence-based interventions matched to student need (Tier 3)
  - \* On-going progress monitoring of student performance (Response to Intervention (RTI))
- \* Parent participation in this process is important to ensure the student receives the most appropriate supports possible

# Who Gets Special Education?

- \* To receive special education services, a student must:
  - \* Be between the ages of 3 -21,
  - \* Meet criteria for at least one of the 14 disability eligibility categories, and
  - \* Have a disability that:
    - \* Adversely affects their educational performance, and
    - \* Requires specially designed instruction



# Who Gets Special Education?

## Disability Eligibility Categories

1. Autism Spectrum Disorder
2. Deaf-Blindness
3. Deafness
4. Developmental Delay\*
5. Hearing Impairment
6. Intellectual Disability
7. Multiple Disabilities
8. Orthopedic Impairment
9. Other Health Impairment
10. Serious Emotional Disability
11. Specific Learning Disability
12. Speech or Language Impairment
13. Traumatic Brain Injury
14. Visual Impairment

# What is an IEP?

- \* **Individualized Education Program**
- \* The IEP document must include:
  - \* Student's strengths, weaknesses, and needs
  - \* Measurable goals for the student to achieve in the course of a year
  - \* The accommodations, modifications, related services, and specially-designed instruction necessary to help the student reach the IEP goals
  - \* Where the services will be provided (i.e., regular education or special education setting)
- \* IEPs are developed by the IEP Team, which includes the Special Education Decision Maker (SEDM)
- \* Students with IEPs are entitled to a free appropriate public education (FAPE)

# IEP vs. Section 504 Plan

- \* IEP
  - \* Each public school student who receives special education and related services must have an IEP
  - \* Allows students to receive specialized instruction
- \* Section 504 Accommodation Plan (Section 504 Plan)
  - \* For a student with a disability who does not require specialized instruction, but needs accommodations/modifications to make sure they receive equal access to their education
  - \* Broader definition of disability
- \* If a student has an IEP, they do not require a Section 504 Plan

# IEP vs. Section 504 Plan

## IEP

- \* Sam meets eligibility criteria as a student with a Specific Learning Disability. His IEP provides services with a special education teacher several times a week to address his individual goals in reading, writing, math, and organization. He also receives modified assignments, extended time on tests, and takes tests in a room with fewer students.

## Section 504 Plan

- \* Erin has severe Myopia (nearsightedness). Her Section 504 Plan requires seating near the teacher/board and all printed materials presented in a larger font.

# IEPs & Section 504 Plans

- \* Annual Reviews:
  - \* IEPs are required to be reviewed annually, and it is common for Section 504 Plans to be reviewed annually as well
- \* Very important for the SEDM/legal guardian to attend IEP and Section 504 meetings and advocate for changes to help their student
- \* SEDM/legal guardian may request an IEP/Section 504 meeting at any time during the year
- \* SEDM/legal guardian should follow up with teachers to make sure services, accommodations, and modifications are being provided as written

# Eliminating Bullying for Students with Disabilities

# Bullying, Generally

# Bullying Characteristics

- \* Typically occurs where there is a real or perceived imbalance of power (physical, emotional, or social) between the person bullying and the victim
- \* Often related to a person's personal characteristics, such as:
  - \* Race, color, religion, ancestry, national origin, gender, socioeconomic status, academic status, gender identity/expression, physical appearance, sexual orientation, physical, mental, developmental or sensory disability, creed, political belief, age, linguistic or age difference, height, weight, marital status, or parental status

# Main Types of Bullying

- \* Verbal/Written bullying:
  - \* Name-calling
  - \* Making false accusations
  - \* Making inappropriate sexual comments
  - \* Taunting
  - \* Threatening to cause harm
- \* Social bullying (hurting someone's reputation or relationships):
  - \* Leaving someone out on purpose
  - \* Telling others not to be friends with someone
  - \* Spreading rumors about someone
  - \* Embarrassing someone in public
- \* Physical bullying:
  - \* Hitting/kicking/pinching
  - \* Spitting
  - \* Tripping/pushing
  - \* Taking or breaking someone's things
  - \* Making mean or rude hand gestures
  - \* Blocking/impeding someone's movement

# Bullying Warning Signs

- \* Students being bullied may exhibit the following:
  - \* Unexplained injuries
  - \* Lost/destroyed personal items (such as clothing, books, electronics)
  - \* Frequent headaches or stomach aches, or faking illness
  - \* Changes in eating habits
  - \* Avoidance of social situations
  - \* Difficulty sleeping
  - \* Decrease in grades or desire to attend school
  - \* Low self-esteem
  - \* Desire for self-harm

# Bullying Policies: North Carolina

- \* Each school district/charter school is required to have a policy prohibiting bullying, including:
  - \* Consequences and appropriate remedial action for a person who bullies
  - \* Procedures for reporting acts of bullying, including a provision that permits a person to report bullying anonymously
  - \* Procedures for prompt investigation of reports of bullying
- \* Any school employee, student, or volunteer who has witnessed or has reliable information that a student or school employee has been subject to bullying behavior should report it to an appropriate school official

# Bullying Policies: CMS

- \* Violation for any school staff to tolerate any bullying
- \* Bullying conduct that occurs away from school may still be disciplined, if the off-campus behavior:
  - \* Includes threats of harm to person or property, OR
  - \* Results in a material and substantial disruption of the orderly conduct of school business or activities, or interferes with the learning environment or the rights of others at school
- \* Cyberbullying is the use of technology to:
  - \* Post slurs, rumors, or disparaging remarks about a student
  - \* Engage in verbal/written bullying through emails or instant messages
  - \* Take or send obscene or embarrassing pictures of students or other people
  - \* Post misleading or fake pictures

# Reporting Bullying: CMS

- \* Two Main Ways to Report Bullying in CMS:
  1. Use the online bullying reporting system
    - \* CMS homepage or Bullying Prevention Department webpage
    - \* Has an option to “check status”
    - \* Preferred method
  2. Use the Intimidation, Bullying and/or Threats Administrative Report Form
    - \* Make sure to keep a copy!
- \* Report bullying every single time it occurs!
- \* Anyone who has knowledge of bullying is required to report it
- \* CMS Bullying Prevention Department:
  - \* [preventbullying@cms.k12.nc.us](mailto:preventbullying@cms.k12.nc.us)
  - \* 980-343-2748

# Response to Bullying: CMS

- \* The principal or their designee shall promptly investigate claims or reports of bullying or harassment
- \* Consequences for bullying behavior are set forth in the CMS Code of Student Conduct

# Requesting Transfer/Reassignment: CMS

- \* Parents/legal guardian can request transfer/reassignment based on bullying. They must provide the following:
  - \* Documentation that the bullying incidents which are the basis of the transfer request have been reported to the principal (or other appropriate staff person) at the current school;
  - \* Documentation confirming a face-to-face meeting between the family and the principal of the current school to discuss the bullying report;
  - \* A description of the interventions developed to prevent the bullying from recurring and details on how they have been implemented; and
  - \* Documentation of occurrences of bullying after the implementation of the interventions by the current school

# Eliminating Bullying for Students with Disabilities

# Impact of Bullying

- \* Students with disabilities are two to three times more likely to be bullied than their nondisabled peers
- \* The negative effects of bullying may include:
  - \* Higher rates of absenteeism and dropping out of school
  - \* Decreased academic performance
  - \* Inability to concentrate
  - \* Increased frequency or intensity of behavioral interruptions/outbursts

# Protections for Students with Disabilities

- \* Students with disabilities have additional protections, even if the bullying is not related to their disability:
  - \* Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (ADA) apply if bullying causes a student with a disability to be denied an equal opportunity to an education
  - \* Includes students with IEPs or Section 504 Plans
- \* The U.S. Department of Education's Office for Civil Rights (OCR) has clear and specific guidance for school systems
- \* If OCR guidance is not followed, parents/legal guardian can file an OCR complaint

# Analyses Related to Bullying for Students with Disabilities

- \* When a student with a disability is bullied, there are two separate analyses schools should conduct:
  1. Is the bullying based on the student's disability (called disability-based harassment)?
  2. Has the bullying resulted in the denial of a free appropriate public education (FAPE)?

# Analysis #1

Is the bullying based on the student's disability  
(called disability-based harassment)?

# Disability-Based Harassment

- \* Disability-based harassment is when a student is bullied based on their disability
- \* OCR states that when a school knows or should know about this kind of bullying, it must take immediate and appropriate action to investigate
- \* The investigation should determine if bullying caused a hostile environment:
  - \* Hostile environment (OCR definition): Sufficiently serious to interfere with or limit a student's ability to participate in or benefit from the services/activities/opportunities provided by the school
- \* If found, school must take prompt and effective steps reasonably calculated to:
  - \* End the bullying,
  - \* Eliminate the hostile environment,
  - \* Prevent it from recurring, and
  - \* Remedy its effects

# Possible Bullying Remedies

- \* Examples from OCR:
  - \* Compensatory education
  - \* Counseling for the victim
  - \* Ongoing monitoring by the school to determine if bullying continues
  - \* Schoolwide bullying prevention strategy
  - \* Voluntary school climate survey for parents/students to assess the presence and effect of bullying
  - \* Revising the district's anti-bullying policies to be more effective
  - \* Training staff and parent volunteers, such as those who monitor lunch/recess/field trips, on the district's policies, and how to recognize and report bullying
  - \* Providing continuing education to students on the district's policies, including where to get help if a student witnesses or experiences bullying
- \* Parents/legal guardian may request these items without going through the OCR complaint process

# Disability-Based Harassment

- \* OCR finds a disability-based harassment violation under Section 504/Title II of ADA when:
  1. A student is bullied based on a disability,
  2. The bullying is sufficiently serious to create a hostile environment,
  3. School officials know or should know about the bullying, and
  4. The school does not respond appropriately

# Analysis #2

Has the bullying resulted in the denial of a FAPE?

# FAPE

- \* Students with an IEP or Section 504 Plan are entitled to a FAPE:
  - \* Free
  - \* Appropriate
  - \* Public
  - \* Education

# Bullying and FAPE

- \* Bullying of a student with a disability for ANY reason can result in a denial of a FAPE that must be remedied under Section 504
  - \* Does not need to be disability-based harassment
- \* An IEP/Section 504 Plan meeting should be held to determine:
  - \* Whether the bullying changed the student's needs, such that the current IEP/Section 504 Plan is no longer able to provide meaningful educational benefit
  - \* The extent to which new or different services are necessary to address the student's needs
    - \* Needed changes should be made promptly
    - \* The student should not bear the burden of avoiding or handling bullying
- \* The student should remain in their original placement and setting (school and classroom) unless doing so denies a FAPE
- \* Families should proactively request an IEP/Section 504 meeting if they believe their student has been bullied

# Examples Indicating a Change in the Student's Needs

- \* Negative changes in academic performance or behavior, such as:
  - \* Sudden decline in grades
  - \* Onset of emotional outbursts or withdrawal
  - \* Increase in frequency or intensity of behavioral challenges
  - \* Increase in absences

# Possible Supports through IEP/Section 504 Plan

## \* Examples:

- \* Identify a trusted adult in the school, for the student to:
  - \* Report bullying
  - \* Seek assistance and assurance
  - \* Remind them bullying is not their fault
  - \* Help them feel safe
- \* Create a plan for how the school will document and report incidents
- \* Request trainings for school staff and classroom peers to help them understand a student's disability
- \* Student education about school district policies on bullying behavior
- \* Create safe transitions
  - \* Allow the student to leave class early to avoid hallway incidents
  - \* Have a staff member “shadow” the student in hallways, classrooms, and playgrounds
- \* Compensatory education

# What if my Student with a Disability is Bullying?

- \* Sometimes students with disabilities engage in bullying behavior related to their disability
- \* This should be addressed through their IEP or Section 504 Plan. For example:
  - \* Behavior and/or social skills IEP goals
  - \* Counseling as a related service
  - \* A Functional Behavioral Assessment (FBA) and Behavioral Intervention Plan (BIP)

# Review

- \* Families should:
  - \* Report every instance of suspected bullying in writing and keep a copy for themselves
  - \* Follow up with the status of the investigation and any corrective action being taken
  - \* Suggest potential remedies
  - \* If applicable, request an IEP or Section 504 meeting to discuss the bullying and its impact on the student

# Filing an OCR Complaint

- \* Complaint must be filed within 180 calendar days of the discrimination
- \* OCR acts as a neutral fact-finder
- \* OCR does not handle cases that are being addressed by another agency or within a school's formal grievance procedure
  - \* Once the other complaint process is completed, you have 60 days to refile your complaint with OCR

# OCR Resources

- \* Website:
  - \* <https://www2.ed.gov/about/offices/list/ocr/index.html>
  - \* Overview of the applicable laws
  - \* Policy guidance on disability discrimination
  - \* Frequently Asked Questions
  - \* Complaint form
- \* Regional OCR Office
  - \* 202-453-6020
  - \* [ocr.dc@ed.gov](mailto:ocr.dc@ed.gov)

# Bullying Resources

- \* [StopBullying.gov](http://StopBullying.gov) - hosted by US Department of Health and Human Services
- \* [PACER.org/bullying](http://PACER.org/bullying) – National Parent Center funded by the Office of Special Education Programs (OSEP)
- \* [NICHCY.org](http://NICHCY.org)
- \* [Safesupportiveschools.ed.gov](http://Safesupportiveschools.ed.gov) – National Center on Safe Supportive Learning Environments

# Contact the Education Law Program

- \* Educational Advocacy for Individual Families
  - \* [GetHelp@cfcrights.org](mailto:GetHelp@cfcrights.org)
  - \* (704) 943-9609
- \* Education Navigation
  - \* [ELP@cfcrights.org](mailto:ELP@cfcrights.org)
  - \* (704) 943-9611
- \* Training Requests
  - \* [ELP@cfcrights.org](mailto:ELP@cfcrights.org)
  - \* (704) 372-7961

# Helpful Resources

- \* North Carolina Department of Public Instruction:
  - \* <http://www.dpi.state.nc.us>
  - \* Exceptional Children Division: <https://ec.ncpublicschools.gov/>
- \* NC Policies Governing Services for Children with Disabilities
  - \* <https://ec.ncpublicschools.gov/policies/nc-policies-governing-services-for-children-with-disabilities>
- \* Exceptional Children's Advocacy Center:
  - \* <http://www.ecac-parentcenter.org/>
- \* LawHelpNC:
  - \* <https://www.lawhelpnc.org/issues/education>
- \* A Parent's Guide to Special Education in NC:
  - \* <https://law.duke.edu.childedlaw/special-education-nc/>

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Please complete your post-training  
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