Advocates for Children of New York
Protecting every child's right to learn

July 28, 2021

Julia De Persia
Office of Legal Services
New York City Department of Education
52 Chambers Street, Room 308
New York, NY 10007
Via email: RegulationA-710@schools.nyc.gov

Re: Proposed Amendments to Chancellor's Regulation A-710 – Section 504 Policy and Procedures for Students

Dear Ms. De Persia:

Advocates for Children of New York ("AFC") appreciates the opportunity to submit comments regarding the proposed amendments to Chancellor's Regulation A-710 – Section 504 Policy and Procedures for Students. For 50 years, AFC has worked to ensure a high-quality education for New York students who face barriers to academic success, focusing on students from low-income backgrounds. Every year, we help thousands of New York City families of students with disabilities navigate the education system. As such, we are well positioned to comment on the proposed changes to the regulation.

We appreciate the DOE's efforts to update and revise A-710. We are focusing our comments on a few areas where we are recommending changes to the proposed amendments.

Section II(B)

We appreciate that the DOE has outlined additional responsibilities of the Section 504 coordinator in Section II(B). Over the years, AFC has worked with families who have had difficulty getting medical accommodations in place because the DOE rejected medical forms as being incomplete or filled out incorrectly by a medical professional. Some of the families who have had difficulty getting the required forms to be accepted by the DOE speak a language other than English or have difficulty getting in contact with their child's doctor. Without needed medical accommodations, some students have had to stay at home, missing school. Particularly given the proposed regulations in Section IV(B) that tie the timelines for holding a Section 504 meeting to receipt of various forms, we suggest adding the following language to the list of responsibilities of the Section 504 coordinator:

- <u>coordinating with the parent; school, Borough/Citywide Office, and central DOE staff; and medical professionals to ensure the DOE receives all forms needed for the DOE to move forward with Section 504 requests in a timely manner</u>.

Section IV(A)(3)
The new proposed language to Section IV(A)(3) states that the "Borough/Citywide Office Health Director (Health Director) … must be consulted where additional resources requiring funding are being considered for a new accommodation or to renew an existing accommodation. The decision about whether a student requires particular accommodations is strictly within the purview of the school-based 504 Team."

We are encouraged by the language making clear that only the 504 Team including the parent makes the decision regarding what accommodations the student needs. The regulation also must make clear, however, that an additional cost to the DOE should not be the basis for denying an accommodation that the student needs. *See C.D. v. New York City Department of Education*, 2009 WL 400382 (S.D.N.Y. Feb. 11, 2009).

Section IV(B)
The new proposed language to Section IV(B) includes a revised timeline for when the meeting must occur. For students who need medication administered or medically prescribed treatment, the timeline is tied to the receipt of the Medication Administration Form ("MAF"), requiring that the meeting take place "[w]ithin fifteen (15) school days of the receipt of the written 504 request and MAF or Medically Prescribed Treatment Form." However, Section III(B) states that the parent's request for a 504 accommodation is initiated by the submission of the 504 request form and the *Medical Accommodations Request Form* (the "MARF") and does not reference the MAF or the Medically Prescribed Treatment Form. If the DOE is requiring a MAF/Medically Prescribed Treatment Form to be submitted prior to the 504 meeting, the regulations should provide clear instructions on when and how to submit these forms in Section III where the required documents are laid out to help avoid delay in the 504 meeting, instead of including this information for the first time in the section about the content of 504 Plans (Section V(B)(1)). Indeed, Section IV(B)(1) states

that the Office of School Health's review of the MAF does not need to be completed prior to the 504 meeting.

In addition, while we appreciate that the DOE is decreasing the timeline for holding Section 504 meetings where there is a request for medication administration or medically prescribed treatment, we are concerned that 15 school days (or three weeks) is still a long time for the student to be without a needed accommodation. For newly enrolled students, the wait for an accommodation is even longer, starting the three-week clock from the beginning of school, rather than when the parent submitted the 504 request or MAF. As a result, newly enrolled students whose paperwork was submitted at the beginning of the summer will not be required to receive their accommodations until three weeks into the school year.

Sections IV(B)(6) *and* ***IV(C)***

We are concerned that the proposed language in Sections IV(B)(6) and IV(C) requires the school to make decisions regarding the student's eligibility for accommodations and accommodations themselves without parent involvement. Although Section IV(A)(3) states that the decision "about whether a student requires particular accommodations is strictly within the purview of the school-based 504 Team," Section IV(B)(6) states that the 504 Coordinator is encouraged to complete a proposed draft of the 504 Plan prior to the meeting. Furthermore, although Section IV(A) makes clear that the Section 504 team includes the student's parent, Sections IV(C) and IV(C)(4) state that the "504 team" must decide whether the student is eligible for 504 accommodations "[p]rior to the 504 meeting with the parent" and notify the parent in writing of the decision. The DOE should revise Sections IV(B)(6), IV(C), and IV(C)(4) to ensure that the parent remains a full member of the Section 504 team and is part of the decision-making process, including the decision of whether the student is eligible for 504 accommodations.

Section IV (F)(3)

Section IV(F)(3) states: "To request a continuation of 504 accommodations, the parent must submit the 504 request forms described in Section II.B.1 to the 504 Coordinator." Unlike the Individuals with Disabilities Education Act ("IDEA"), which requires an annual meeting to discuss the Individualized Education Program ("IEP"), Section 504 does not require an annual meeting to discuss accommodations. Furthermore, just as an IEP stays in effect until there is a change to the IEP or declassification of the student following a reevaluation, Section 504 accommodations that have been agreed upon must stay in effect absent agreement to change them; the accommodations are not discontinued after a year, as this proposed language suggests. The U.S. Department of Education's Office for Civil Rights has made clear that students are eligible for Section 504 services until the school district reevaluates the student and determines that the student is no longer eligible:

"**Once a student is identified as eligible for services under Section 504, is that student always entitled to such services?**

Yes, as long as the student remains eligible. The protections of Section 504 extend only to individuals who meet the regulatory definition of a person with a disability. If a recipient school district re-evaluates a student in accordance with the Section 504 regulatory provision at 34 C.F.R. 104.35 and determines that the student's mental or physical impairment no longer substantially limits his/her ability to learn or any other major life activity, the student is no longer eligible for services under Section 504."

U.S. Department of Education Office for Civil Rights, *Frequently Asked Questions About Section 504 and the Education of Children with Disabilities*, at https://www2.ed.gov/about/offices/list/ocr/504faq.html (question 14).

The proposed regulation appears to shift the burden to parents to request continued eligibility for Section 504 accommodations in clear violation of the law. The DOE should revise the proposed amendments to make clear that the accommodations remain on the student's Section 504 Plan, absent agreement to change the accommodations or reevaluation. If a MAF is legally required each year, the proposed regulation can then state that if a student requires medication, the parent must provide an updated MAF annually to the extent required by law to continue implementation of the accommodation.

Section IV(G)

The proposed language in Section IV(G) states that some requests for 504 accommodations will be referred to special education offices. To avoid any delay in a student receiving special education services and accommodations for their disability, we ask that the DOE add the underlined language to the proposed regulation: "In this situation, the 504 Team shall refer the student to the school-based IEP team or district Committee on Special Education for evaluation<u>, and the parent's 504 request will be treated as a request for special education services</u>."

Thank you for the opportunity to comment on the proposed amendments to A-710.