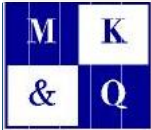


SPECIAL EDUCATION:

MEETING YOUR LEGAL OBLIGATIONS TO ACCOMMODATE STUDENTS WITH SPECIAL NEEDS

**PRESENTED BY:
JOHN C. GUNDERSON**



Legal Disclaimer

The information set forth in these materials is intended to provide an outline of the law existing as of the presentation date. It is not intended as, nor should it be considered, “legal advice.” If you are presented with a specific issue, you should consult with qualified legal counsel.

Federal Law – Students with Disabilities

- Americans with Disabilities Act – ADA. (Title III)
Not applicable to religious-affiliated schools.
- Individuals with Disabilities Education Act – IDEA.
Not applicable to private schools.
- **Section 504 of the Rehabilitation Act of 1973.**
May apply to private schools that receive any federal money.

State Law - MHRA

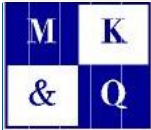
- Applies to “educational institutions,” including private schools.
- Prevents schools from discriminating against several protected classes, including disabled persons.



The MHRA's Prohibition on Discrimination

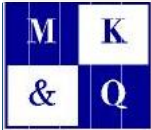
- Cannot discriminate through
 - Exclusion
 - Expulsion
 - Admission - **can't ask questions that elicit or attempt to elicit information regarding a disability.**





The MHRA Requires “Program Access”

- Private schools must ensure physical and program access.



MHRA Reasonable Accommodation

- Private schools owe reasonable accommodations to disabled students.
- Case-by-case evaluation.
- Cost-benefit analysis.

Section 504 applies to private schools that accept any federal funds, direct or indirect

- Free and reduced lunch program
- Federal milk program
- Federal energy grant
- Title I remedial education
- Title II Eisenhower professional development
- Title III technology
- Title IV Drug free schools
- Title VI Innovative programs



Private Schools Standard

- Section 504: “A recipient that provides private . . . education may not, on the basis of handicap, exclude a qualified handicapped person if the person can, with **minor adjustments**, be provided an appropriate education . . . within that recipient’s program or activity.” 34 C.F.R. sec. 104.39(a).

Section 504 bans discrimination

- **Caution**
- **Potential liability extends to damages and attorney's fees.**



Section 504 Process and Notice

- Private schools must designate an employee as the section 504 coordinator.
- Private schools must establish an informal section 504 grievance process. Not a formal hearing. But must have “due process standards” and provide for “prompt and equitable resolution of complaints.”
- Do you have a grievance policy?



Section 504 – more than the classroom

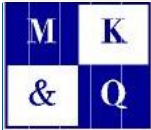
- Equal opportunity to participate in nonacademic and extracurricular services and activities, including counseling services, physical education and athletics. 34 C.F.R sec. 104.37.
- Physical accessibility. 34 C.F.R. sec. 104.21-.23.



Overview of section 504 Steps

- Do not discriminate against **applicants**.
- Verify disability.
- Provide “minor adjustments.”

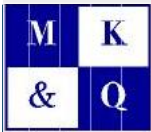




Is the student's condition a disability ?

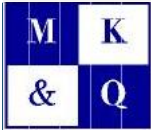
Law protects those students who:

1. have a physical or mental impairment that substantially limits one or more major life activities;
2. have a record of such an impairment;
3. may be regarded as having such an impairment.



Broad range of disabilities

- **Physiological disorders/conditions**
- **Mental/psychological disorders**
- **10 categories of potential disabilities**



Verify Disability

- Verify with medical documentation or other evaluations from qualified professionals.
 - Identify condition/disorder/impairment.
 - Explain how it limits a major life activity.
 - Identify limitations of the condition.

Definition of minor adjustment

- No exact definition. It is a much lower standard than public school obligations under section 504.
- Office of Civil Rights (OCR) has noted that the minor adjustment standard “differs radically from the obligations of similar public programs.”

Compare minor adjustment to reasonable accommodation under MHRA?

- Reasonable accommodation likely places more obligations on a private school than minor adjustments under section 504.
- MHRA claim may be the focus of a complaint.
- Minnesota law is always an important consideration.



Q: What is a minor adjustment?

- Tutorial services
- Extra time to take exams
- Alternative teaching strategies
- Grading procedures
- Special seating arrangements
- Snack breaks
- Leaves of absence
- Time extensions to complete diploma

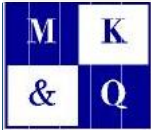
Q: What is a minor adjustment?

- For a student with ADD: Daily notes to parents that describes homework assignments.
And a low-distraction exam environment.



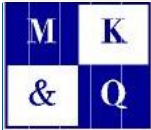
- A service animal ?
Maybe (The ADA explicitly allows this as a reasonable accommodation).





Reasonable Accommodations

- **Communications**
 - Meetings
 - Journals
- **Presentation of materials**
 - Reading directions
 - Visual aids
- **Teacher responses to a student**
 - Behavior intervention plans
- **Student setting**
 - Study area, special lighting, special desk

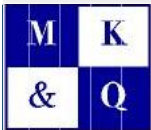


Not minor adjustments

- Generally, special education instruction is beyond a minor adjustment.
- Additional staffing is generally not required.
- Minor adjustments do not include costly ones.
- Establishing a new program not required.
- Persistent disruption of other students not required.
- Putting the health or safety of other students at risk not required.
- Not required to modify core academic requirements.

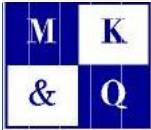
Should a private school develop a “special education” program?

- **NO**, because additional section 504 regulations can apply, including:
 - ✦ Must evaluate students who may need special education services. 34 C.F.R. sec. 104.35.
 - ✦ Must provide due process, including a hearing to resolve disputes. 34 C.F.R. sec. 10-4.36.



Minor adjustment example

- Students with cerebral palsy were in wheelchairs and had limited communication skills.
- School determined that these student's needs for special education instruction and related services were more than it could handle.
- And the students' behavior and their parents' presence as aids were disruptive.
- Private school did **not** violate section 504.



Should a private school make a “504 Plan”

- Consider alternative labels: “learning plan”; “minor adjustment plan” to be clear that private school is not adopting public school obligations.

Individuals with Disabilities Education Act – IDEA

- Private schools are not subject to IDEA.
- But requires public schools to offer services to students at private schools.

- IDEA – School districts have obligations to “parentally placed private school students with disabilities.”

Child Find Consultation

- Local educational agencies (LEA) must provide “genuine opportunity” for private school representatives to participate.

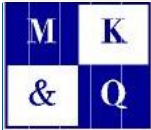


- Since IDEA was written for public education the bridge to non-public schools is **communication**.

Service Plan

- A service plan (or individual service plan -ISP) is required. Must follow IEP process.
- Service plan reflects only the services that the LEA has determined it will provide to the student.
- Private school representative must be permitted to participate in each meeting to develop service plan.





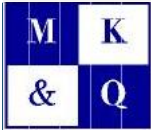
Service Plan

- Private school minor adjustments should **not** be in the service plan.

Minnesota “Shared-Time” statute

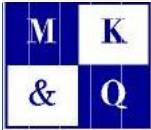
- MN “shared-time” statute: “No resident of a district who is eligible for special instruction and services under this Section may be denied instruction and services on a shared time basis. . . Because of attending a nonpublic school.” Minn. Stat. sec. 125A.18.





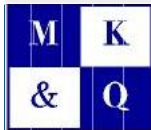
R.M.M. Case

- Recent federal appeals court decision, June 2017. *R.M.M. v Minneapolis Public Schools*, 861 F.3d 769 (8th Cir. 2017).
- Child enrolled at private school from K-5th
- MPS wrote ISP for reading, writing and math. Four 30-minute sessions per week. Bussed to MPS.
- Parents not satisfied with MPS instruction.



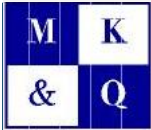
R.M.M. cont'd

- Private school informed parents it could not provide the services she needed. R.M.M transferred to MPS full time.
- R.M.M sued MPS and claimed she was denied a FAPE while enrolled at private school.
- Lower court ruled in favor of R.M.M. and MPS appealed. Appeals court also ruled in favor of R.M.M.



Minnesota Services Exceed IDEA

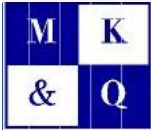
- IDEA does **not** provide private school students individual entitlement to special education. Limits funding to students as a **group**.
- However, IDEA stands in “**sharp contrast**” to MN law, which speaks directly to the special instruction and services owed to private school students.
- MN law requires a FAPE on a shared-time basis (even though the statute does not use the term FAPE).



MN Department of Education

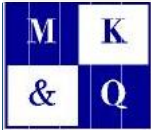
- MDE guidance:
“Minnesota law exceeds federal requirements for services to a student with a disability who is placed by parents in a nonpublic school.”





MN FAPE Due Process

- MN law grants private school students and their parents the right to an impartial due process hearing to dispute the provision of a FAPE by the public school under the shared-time statute.



R.M.M. impact

- When a service plan is being developed by public school, all participants must understand MN shared-time law goes beyond federal IDEA.
- Private school student has an **individual** right to special education services.

Discipline of Students with Special Needs

- IDEA has very strict requirements regarding discipline – **not** applicable to private schools.
- And Section 504 and ADA provides children with rights when being disciplined.

Discipline



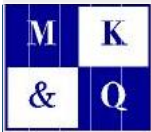
- Section 504 has a broad ban on retaliation. Be careful that discipline cannot be construed as retaliation.

Discipline under section 504

- **Must consider modification of disciplinary policies to accommodate a disability.**

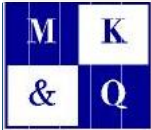


- Private school requirement to provide “minor adjustments” under section 504 applies to discipline policies.



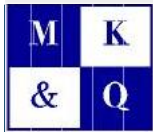
Discipline under MHRA

- **MHRA prohibits discrimination through expulsion. Make reasonable accommodations for disabled student.**
- **Reasonable accommodations are likely more than “minor adjustments” under section 504.**



Suspension

- IDEA and section 504 applied to public schools permits up to 10 days – cumulative – suspension before re-evaluation of special needs student.
- Exception for behavior that causes substantial injury to others.



Is misconduct a manifestation of the disability?

Nondiscrimination includes not punishing students for conduct caused by a disability.

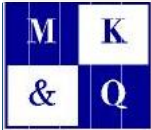
Can further accommodations be made?

- **Public school is required to conduct a manifestation review under IDEA.**
- **While IDEA does not apply to private school, exercise caution in discipline when misconduct may be a manifestation of the disability.**

- **General Rule: Disruptive behavior that interferes with other students is likely not exempt from school discipline policy. Permitting such behavior may be beyond a reasonable accommodation.**

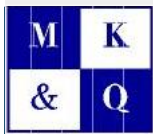
Case example

- Student suffered from autoimmune disease, susceptible to life-threatening bleeding. She cut herself during art class, became hysterical and began to shout obscenities. Private school expelled her.
- Student sued and won. The student's behavior was related to her disability. The school should have modified its disciplinary code as required by section 504.



Process

- Review the discipline policy.
- Modify the discipline policy as appropriate to make reasonable accommodations for the disability.
- Follow the section 504 grievance process.



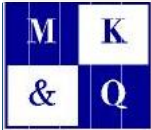
Discipline: Can you be Proactive?

- Private school should (must) participate in service plan process. Can disciplinary issues be addressed in the service plan?
- During service plan process ask if the child has behavior problems.
- Can disciplinary issues be addressed in private school learning plan?

Facts



- PACER website facts: More than 200,000 children with special needs in Minnesota.
- Go to: “Obtaining an Evaluation for a Private School Student” at pacer.org



QUESTIONS?