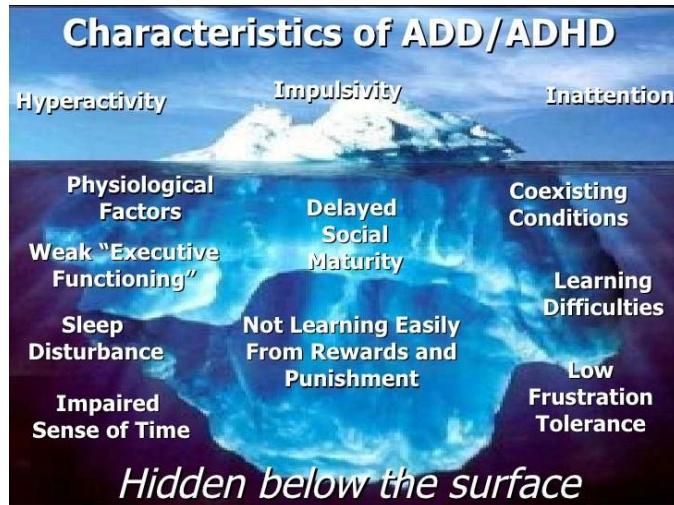


Ensuring School Success for Students with ADHD

How New Federal Guidance Impacts Your Child



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Formed Families Forward



Two recent guidance documents!

- *Students with ADHD and Section 504: A Resource Guide*, July 2016
- *Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools*, December 2016 (not specific to ADHD but inclusive of)
- Both by US Department of Education, Office of Civil Rights
- <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201607-504-adhd.pdf>
- <https://www2.ed.gov/about/offices/list/ocr/docs/504-resource-guide-201612.pdf>

Big picture- The ADHD Numbers!

- A neuro-biological disorder which effects 10.4% of school-age children (age 5-17; CDC, 2013-15).

- Specifically:

- 7.6% of children 5-9
 - 12.1% of children 10-17

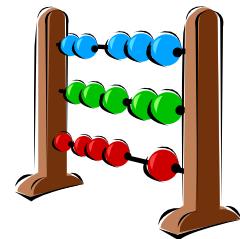
- ADHD is highly genetic: If birth parent with ADHD, child has more than 50% probability of having ADHD

- Characterized by inappropriate levels of inattention, impulsivity and hyperactivity.



The ADHD numbers for formed families

- 26% of adoptive parents report their adopted children age 6 and older were ever diagnosed with ADHD (vs. 7- 10%).
- 38% of parents who adopted from domestic foster care report the same (NSAP, 2007)
- 5 years post-international adoption, 25% had diagnosis of ADHD (most common of all diagnoses) (Glennen & Bright, 2005)
- Children who live in kinship care with a relative have more special health care needs, mental health problems such as ADHD and depression, and dental problems compared with children who live with their parents (Eleoff, 2010)



ADHD: What do we know now?

Facts- Probable Causes of AD/HD –

- **Neurobiological Disorder** Strength of Evidence: Strong
- **Genetic Predisposition** Strength of Evidence: Strong
 - Other (Low Incidence Rate)
 - Abnormal Fetal Development
 - Fetal Alcohol Spectrum Disorders/ Prenatal exposure
 - Injury
 - Environment

Federal Policy Tools

- Section 504 of the Rehabilitation Act (1973)
- The Individuals with Disabilities Education Act (IDEA; 1975)- guarantees right to a free, appropriate public education to children 0-22 who have a disability that creates an adverse effect on learning, thus creating an educational need. **Think: Specialized instruction...**
- The Americans with Disabilities Act (ADA; 1990)- protects the civil rights of people with disabilities in all aspects of employment, in accessing public services such as transportation, and guaranteeing access to public accommodations such as restaurants, stores, hotels and other types of buildings to which the public has access. **Think access, reasonable accommodations, & modifications of policies, practices and procedures.** Title II prohibits State and local governments from discriminating on basis of disability (regardless of federal \$).

Interplay between the laws

- Students with disabilities may be protected under two or three federal laws simultaneously.
- IDEA defines disability differently (categories) from 504 and ADA
- All students with disabilities are eligible for special education and related services under IDEA are protected by 504 and Title II of ADA but inverse is not true.
- **Violations of Section 504 by schools also constitute violation of Title II.** But to the extent that Title II provides additional or greater protections than 504, covered entities must comply with Title II's requirements.



Section 504/ADA

IDEA/IEP

ADA amendments of 2008, PL 110-325



- Americans with Disabilities Act Amendments Act (Amendments Act) clarified the **broad scope and definition of “disability”** and determination of whether an individual has a disability did “not demand extensive analysis.”
- Expanded the **list of examples of major life activities** by adding, among other things, concentrating, reading, thinking, and functions of the brain.
- Stated that **mitigating measures shall not be considered** in determining whether an individual has a disability. Mitigating measures include, for example, medications, coping strategies, and adaptive neurological modifications that an individual could use to eliminate or reduce the effects of an impairment.

Section 504- eligibility

For purposes of §504, a “*qualified individual with a disability*” is one who:

- Has a physical or mental impairment which substantially limits one or more major life activities;
- Has a record of such impairment, or;
- Is regarded as having such an impairment.



Major Life Activities, includes

- Caring for oneself
- Performing manual tasks
- Seeing, hearing, etc.
- Walking, standing, etc.
- Speaking
- **Learning**
- Reading
- **Concentrating**
- **Thinking**
- Communicating
- Working

MLAs includes
certain acts AND
bodily functions

In Schools- MLA doesn't have to be **LEARNING**

- A student may have a disability and be eligible for 504 services even if disability does NOT limit major life activity of learning.
- School staff must consider how an impairment affects ANY major life activity and if necessary, assess what is needed to ensure students have an equal opportunity to participate in the school's programs. SO...
- A student may have a disability and be eligible for section 504 services, including modifications, even **if the student earns good grades**. The student's impairment may substantially limit a major life function regardless of where the student performs well academically, and the student may still need special education or related aids and services because of this disability.

Mitigating Measures

- When determining if a person has a disability, the school cannot consider ameliorative effects of mitigating measures when determining how the impairment impacts the major life activities.
- ADA Amendments include a “non-comprehensive” list of mitigating measures including assistive devices (but NOT ordinary eye glasses), **learned behaviors, medications, and adaptive neurological modifications** that an individual may use to eliminate or reduce the effects of an impairment.



Mitigating Measures, continued

- When evaluating for disability, “it is important to consider the mitigating measures that can treat the impairment, thereby obscuring the substantial limitations of the impairment. It is **useful to have evidence showing that an impairment would be substantially limiting in the absence of the ameliorative (beneficial) effects of mitigating measures...**” Page 20 of Parent & Educator Resource Guide, Dec 2016
- A student is not required to stop taking needed medication or using another mitigating measure in order to receive an evaluation.

School Performance & Classwork -Related Problems

- Takes longer than peers to complete work
- Failing to bring home school notices and teacher communications
- Needing constant supervision or help with assignments
- Forgetting assignment book/textbooks or materials needed
- Lying about having done homework

(cont)



Homework- Related Problems

- Failing to return homework and important papers to school.
- Taking hours to do minutes of homework
- Procrastination- hassling about when and where to do homework
- Forgetting to get homework papers signed



In 2016, the US Dept of Education: Office of Civil Rights New Resource Guide on ADHD Students

OCR developed a “**Students with ADHD and Section 504: A Resource Guide**” and a **Dear Colleague Letter** to clarify and provide guidance on the **Federal obligations of school districts that receive Federal financial assistance** from the U.S. Department of Education **students with attention-deficit/hyperactivity disorder (ADHD)* under Section 504 of the Rehabilitation Act of 1973**

Students with ADHD
and Section 504:
A Resource Guide



U.S. Department of Education
Office for Civil Rights
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www.ed.gov

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Dear Colleague-Why OCR felt policy guidance was needed

OCR investigations revealed that students with ADHD could be denied FAPE because of problems due to:

- Students with ADHD symptoms were never referred for, or identified as needing, an evaluation to determine whether the student has a disability and needs special education;
- Students not being evaluated in a timely manner once identified as needing an evaluation; or
- School districts conducting inadequate evaluations of students

Dear Colleague-Why OCR felt policy guidance was needed

Even if properly identified, a student with ADHD who is determined to have a disability may not always receive required services.

- OCR observed that school districts fail to meet their Section 504 obligations when they: 1) make inappropriate decisions about the regular or special education, related aids and services, or supplementary aids and services the student needs, 2) and the appropriate setting in which to receive those services based on a misunderstanding of ADHD and the requirements of Section 504; fail to distribute relevant documentation to appropriate staff; or consider inappropriate administrative and financial burdens in selecting and providing appropriate related aids and services.

Does a diagnosis of ADHD qualify someone for a 504 Plan?

According to the Centers for Disease Control and Prevention (CDC), there are three different types of ADHD, which are categorized depending on which symptoms are strongest:

(1)predominantly inattentive type;

(2)predominantly hyperactive-impulsive type; and

(3)combined type (where symptoms of the first two types are equally present)



Every type of ADHD affects the functioning of the parts of the brain related to thinking, concentrating, and planning. A determination that a student has any type of ADHD, therefore, is a determination that a student has an impairment for purposes of meeting one of the prongs of Section 504's definition of disability.

Does a diagnosis of ADHD qualify someone for a 504 Plan?

According to the OCR, a determination that **a student has any type of ADHD**, is a determination that **a student has an impairment** for purposes of meeting one of the prongs of **Section 504's definition of disability**.



A diagnosis of ADHD is evidence that a student may have a disability. **OCR will presume, unless there is evidence to the contrary, that a student with a diagnosis of ADHD is substantially limited in one or more major life activities.**

ADHD and a High Level of Academic Success

School districts sometimes rely on a student's average, or better-than-average, grade point average (GPA) and make inappropriate decisions while erroneously assuming that a student with an above-average GPA does not have a disability,



and therefore fails to conduct a Section 504 evaluation of that student, even if that student is suspected of having or has been diagnosed with ADHD and receives family provided academic supports outside of school.

When Must a School District Conduct an Evaluation?

- When students demonstrate significant difficulty related to beginning a task, organizing and recalling information, and completing assignments;
- If district staff perceive or receive information to lead them to suspect that a student has a disability to determine if the impairment substantially limits that student in a major life activity;
- An evaluation can also identify other coexisting disorders, such as depression or anxiety, which may be related to the ADHD and impact the kinds of services a student needs;
- A school district must evaluate students who are suspected of having a disability in all related or all specific areas of educational need.

Intervention Strategies Implementation

To address student challenges at school and prior to conducting an evaluation, many school districts choose to implement different intervention strategies, regardless of whether or not the student is suspected of having a disability...including, but not limited to:

- Response to Intervention (RTI);
- multi-tiered system of supports (VTSS-Virginia Tiered System of Support;)
- positive behavioral interventions (PBI) and supports and other strategies;
- and referral to intervention teams.

Intervention Strategies Must Not Deny or Delay Evaluation

School districts run afoul of the Section 504 obligation to evaluate for disability and need for special education or related services when they:

- 1) rigidly insist on first implementing interventions before conducting an evaluation, or that each tier of a multi-tiered model of intervention must be implemented first, regardless of whether or not a disability is suspected and there are needs based on the disability; or
- 2) categorically require that data from an intervention strategy must be collected and incorporated as a necessary element of an evaluation.

Effects of Mitigating Measures

Once a school district believes a student has a disability...it **must** evaluate the existence of a disability by considering whether the student is substantially limited in his or her unmitigated state.

The school district cannot consider the ameliorative effects of any mitigating measures, such as improved grades resulting from peer or outside tutoring in math, in determining whether the student has a disability but could consider them in determining the individual educational needs.



If the student is taking medication, the school district cannot consider any ameliorative effects of that medication.

Eligibility Considerations under 504

Some school districts mistakenly believe that the major life activity of learning must be substantially limited in order for a student to be eligible for FAPE services under Section 504,...however, one student with ADHD may be substantially limited in the ability to learn, but another student with ADHD may be substantially limited in the ability to concentrate.



Eligibility Considerations under 504

In addition, because of the individualized nature of evaluations, school districts must be sure not to act on the basis of stereotypes or generalizations about the nature of ADHD in general, or its incidence in particular groups

While research has shown that boys are more likely than girls to have ever been diagnosed with ADHD (13.2 percent of boys were diagnosed with ADHD as opposed to 5.6 percent of girls),

and that black and Hispanic children are less likely to be diagnosed with ADHD than white children,

a school district could inappropriately ignore the incidence of ADHD in girls, or in students of color, if it makes assumptions about sex, race or ethnicity.

Does the student need regular or special education?

**Not every student with ADHD needs the same set of services,
or any services at all.**

Section 504 does not obligate a school district to provide special education or related aids or services that the student does not need. But the school district must still conduct an evaluation before making that determination.

Further, that student is still a person with a disability, because the student has an impairment that substantially limits a major life activity, and so is protected by Section 504's general nondiscrimination prohibitions (e.g., no retaliation, harassment, unlawful different treatment, etc.)

Accommodation Considerations

Each student's needs are unique, not every student with ADHD needs:

extra time on examinations taken in a quiet room, or

placement at the front of a classroom.

Some might require direct instruction to address the needs created by their disabilities, such as teaching how to break up a large, multi-step assignment into smaller parts, or ordering strategies.

School districts cannot simply group together a few aids and services and provide them in a blanket fashion to any student with ADHD.

Must a 504 Plan be Followed?

In relation to students with ADHD, a school district may erroneously believe the related aids and services in an IEP or Section 504 Plan are optional, or unnecessary because the student is academically gifted, or that the student must specifically request these aids and services on an as-needed basis.

Students with ADHD who are eligible for FAPE under Section 504 are entitled to the provision of services the placement team decides are appropriate, regardless of cost or administrative burden, and especially where such services have been provided to IDEA-eligible students in the past.

Implementing the 504 Plan is Required

OCR cannot overemphasize the importance of making sure that school district personnel understand their obligations to implement appropriate plans for students with disabilities once the plans have been developed.

“It is not the responsibility of the student with a disability to request FAPE.”

Some Gifted Students (2E) Qualify under 504

A gifted student may still need specific and explicit instruction on how to reliably record homework assignments, organize information into class notes, start a multi-stage project, write more efficiently, or respond to challenges to his or her attention or concentration in day-to-day activities.



What is Due Process?

“A system of procedural safeguards for parents to appeal district actions regarding the identification, evaluation, or educational placement of students with disabilities, including students with ADHD.”

The school district must tell parents and guardians about this due process system, notify them of any evaluation or placement actions, allow them to examine their child’s records, afford them an impartial hearing with opportunity for parent or guardian participation and representation by counsel, and provide them a review procedure.

Districts also must ensure that they have properly identified the designated Section 504 coordinator.

Read the Procedural Safeguards

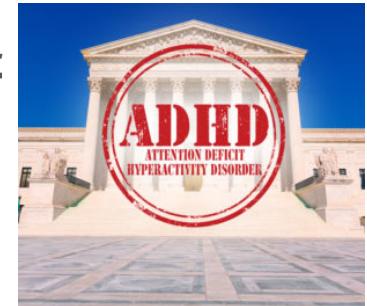
If a parent requests that a school district evaluate her son for disability because she suspects he has ADHD, and the school district refuses to evaluate, the school district must ensure that the parent is aware of her due process right to appeal that district's refusal.

School districts must ensure they provide notice of a parent's due process protections.



Know Your Rights: Students with ADHD

- Section 504 of the Rehabilitation Act (1973) and the Americans with Disabilities Act (ADA; 1990)- protects the civil rights of people with disabilities. **These rights extend beyond high school and into college:**
- **Federal Law Protects Students from Disability Discrimination:**
- **Your School District Must Determine if A Student Has a Disability and Needs Services:**
- **A Student May Be Entitled to Individualized Services to Meet His or Her Needs:**
- **Your School District Must Provide You with Due Process Under Section 504.**



What if I have a complaint?

Office of Civil Rights

<https://www2.ed.gov/about/offices/list/ocr/index.html>



Complaints may be filed on behalf of your child or on behalf of a group of children who allegedly have been discriminated against.



Where do I find more info from the Office of Civil Rights?

- If you would like more information about Section 504, Title II, or the other Federal civil rights laws enforced by OCR or would like to request technical assistance, please contact the enforcement office that serves your State or jurisdiction. Contact information for these offices is available at <https://wdcrobcollp01.ed.gov/cfapps/OCR/contactus.cfm>
- Information about discrimination based on disability is on OCR's website at <http://www.ed.gov/policy/rights/guid/ocr/disability.html>.
- Or, for further information, please contact OCR's Customer Service Team toll-free at 1-800-421-3481