



WHAT WE KNOW

Educational Rights for Children with AD/HD in Public Schools

There are two federal laws that guarantee a free appropriate public education (FAPE) and provide services or accommodations to eligible students with disabilities in the U.S. They are:

1. Section 504 of the Rehabilitation Act of 1973 (called Section 504)
2. Individuals with Disabilities Educational Act¹ (called IDEA)

Section 504 and IDEA are the laws that provide special education, services and appropriate accommodations for eligible children with disabilities in the U.S. When state laws and federal laws are different, schools must follow the federal laws, unless the state law provides the child with more protection.

Both laws also say that children with disabilities must be educated—as much as possible—with children who do not have disabilities. But there are differences between Section 504 and IDEA. Parents, health professionals and teachers should know what each law offers so that they make the best choice for the child.

WHICH ONE IS RIGHT FOR MY CHILD?

There is no one “best” choice. Choosing between Section 504 and IDEA will depend on what the child needs and the degree of impairment.

For those students who will be able to learn with simple accommodations or only minor changes to her or his day, Section 504 is a good choice. Section 504

is faster and more flexible and is a good way for eligible students to get accommodations.

For students who may need a wider range of services or protections, IDEA may work better. IDEA also gives parents more rights and responsibilities to participate in their child's education. Children who do not qualify for IDEA may qualify for Section 504.

SECTION 504

Section 504 is a civil rights statute (a federal law) that states that schools cannot discriminate against children with disabilities. It says that schools must give *eligible* children with disabilities equal opportunity to participate in all academic and nonacademic services the school has to offer and give them accommodations based on their individual needs.

These accommodations are often simple changes that can help the child with her or his disability. Sometimes these accommodations include special services such as using a tape recorder for note taking, giving the student a quiet place to work, or access to a computer in school for written work.

“A student is eligible for Section 504 if the child has a physical or mental condition that substantially limits a ‘major life activity.’”

WHO'S ELIGIBLE?

A student is eligible for Section 504 if the child has a physical or mental condition that substantially limits a “major life activity.” Major life activities for a child in school include learning and/or behavior in addition to walking, talking, breathing, caring for oneself, etc. Children covered under Section 504 are usually children with less serious disabilities, or children who do not otherwise qualify for services under IDEA.

To qualify for Section 504, a child's disability must be serious enough, or “substantially limiting,” that they need specialized services or accommodations.

WHAT DOES SECTION 504 PROVIDE?

If a child is eligible under Section 504, the school must develop a Section 504 plan that includes related services

and/or appropriate accommodations. Many believe that a Section 504 plan is a standard checklist or form used for all eligible children; however, a Section 504 plan should be developed to meet the child's specific needs and not merely what the school district has available.

Accommodations should be documented in the Section 504 plan. Several examples of appropriate accommodations to help children with AD/HD cope with their disability include:

1. Reducing the number of homework problems without reducing the level or content of what is being taught.
2. Giving the student a quiet place to work or a place without many distractions.
3. Providing clear and simple directions for homework and in-class assignments.
4. Giving tests in a quiet place and/or providing extra time.
5. Using tape recorders or giving the student a copy of notes.
6. Using behavior management techniques, including positive reinforcement.
7. Having a nurse or administrator oversee a student's medication.
8. Meeting with the school counselor.
9. Creating a notebook so that parents and teachers may keep each other informed of the child's progress or difficulties.

EVALUATION

Section 504 requires a child to have an evaluation before receiving a 504 plan. An evaluation does not have to be formalized testing, but it must consider information from a *variety* of sources (parent notes, doctor's notes, test scores, observations, etc.). Decisions about who qualifies for Section 504 cannot be based solely on a single source of data (i.e. a doctor's diagnosis or grades). Once a 504 plan has been set, the child should be evaluated again before any significant changes are made. Depending on the procedures used by your individual school district parents may or may not have a right to active participation or decision-making.

IDEA

The Individuals with Disabilities Education Act (IDEA) is the law that provides special education and related services needed for the child to benefit from her or his education. An individualized education program, sometimes called an individualized education plan or IEP, is designed specifically for each eligible child with disabilities to provide a free appropriate public education (FAPE).

WHO'S ELIGIBLE?

A child is eligible for services under IDEA if he or she is diagnosed with a qualified disability and, "by reason thereof," needs special education and/or related services. A child may qualify if AD/HD seriously affects her or his learning and/or behavior at school. Some children with AD/HD will qualify for services under IDEA while others may not: this depends on the degree of impairment.

To qualify for IDEA, a child must meet the criteria of at least one of 13 disability categories. Often children with AD/HD will qualify under the Other Health Impairment (OHI) category. They may also qualify under Specific Learning Disabilities (SLD) or another relevant category.²

Eligibility for IDEA should be decided by a qualified team that is made up of many different professionals including the child's teacher(s), school psychologists, principals, parents and other appropriate school personnel. This team should use information from several different sources including input and ideas from parents, notes from doctors, notes and progress reports from teachers, the child's past academic and behavior records and test results (such as IQ and/or other formalized testing assessments) as well as anything else that might be important.

IDEA says that, as much as possible, services should be provided in a least restrictive environment therefore not all children who receive services under IDEA are placed in special education classrooms. Many stay in their regular classroom with appropriate modifications and/or related services.

WHAT DOES IDEA PROVIDE?

When a child with AD/HD qualifies under the Individuals with Disabilities Education Act, the child receives an individualized education program or IEP. The IEP is a written document that includes specific goals for the child based on her or his current level of performance. The IEP should state the educational

placement, specifically which services will be granted, when they will be provided, how long they will last, how frequently they will occur, and the way in which the child's progress will be measured.

For a child whose behavior prevents her or his learning or the learning of other students in the class, the IEP team must consider the use of positive behavioral interventions and supports or other strategies to address the behavior.

Parents should participate in developing the IEP by making suggestions about what could help their child at school with classwork, homework and behavior problems. Parents or the school can ask for changes to

"IDEA says that children with disabilities must be taught in the regular classroom as much as possible with appropriate, related aids and services."

the IEP. Changes may only be made if a meeting is held and the parents are at the meeting or if both the school and the parents agree to the changes and agree to skip the meeting.

IDEA says that children with disabilities must be taught in the regular classroom as much as possible with appropriate, related aids and services. Removal from the regular education environment should only occur when the severity of the disability is such that even with aids and services, the child or other students cannot learn. This is called the least restrictive environment (LRE) clause.

Students who have an IEP are also entitled to special procedures that must be followed if they are suspended or expelled. Even when suspended or expelled, children covered under IDEA are guaranteed a free appropriate public education (FAPE). Schools are allowed to suspend or expel any student, including a student with a disability, for up to 10 school days.

After 10 days, a hearing (called a manifestation determination) must be held for students with an IEP to see if their behavior was caused by or had a direct

and significant relationship to their disability or if the behavior was a direct result of the school's failure to implement the IEP.

It is important to note that any student who brings a weapon to school, who attempts to buy, sell, or carry illegal drugs on school property; or who causes serious injury to themselves or another student may be moved to an alternate placement. If it is determined that the behavior does have a link to the student's disability, then the student may be moved for up to 45 **school** days. If no link is found, then the student may be removed for the same number of days as a non-disabled student.

EVALUATION

A complete evaluation is required to see if a child is eligible for special education under IDEA. The school must have your written authorization (signature) before they can evaluate your child. Parents may refuse to have their child evaluated, but if they want their child evaluated parents must sign the form. IDEA also requires an eligible child to be evaluated again at least every three years unless parents and the school agree that it is not necessary. Parents do not have to pay for these evaluations. If parents do not agree with the evaluation performed by the school district, they *may* be entitled to have an independent evaluation conducted at no cost to them.

TIPS FOR WORKING WITH THE SCHOOL

Parents, schools and teachers must work together to make sure that children learn all they can. Communication between home and school is very important when a child needs extra help at school. CHADD suggests that parents who think their child might require services or accommodations do the following:

1. Meet with your child's teacher to share your concerns.
2. Ask teachers to write down the learning and/or behavior concerns your child has and to give you a photocopy of that list.
3. Request an evaluation of your child. You may ask at any time, but be sure to do it **in writing**. Make a written request even if you have already talked to a teacher or principal. Date the request and keep a photocopy for your records.

4. Take an active role in preparing the IEP or provide input for a Section 504 plan. Before you meet with the school, make a list of your child's problem areas and what you think might help your child.
5. Follow up each meeting with a letter documenting what took place. List the items you agree with and the items you disagree with and say why. Keep copies of these letters with your child's educational file.
6. Remember that the evaluation results are not final. You have the right to appeal the results. The school must tell you how to appeal.
7. Remember that parents and children are guaranteed certain rights under federal and state laws. Check with the school or your local CHADD support group to find someone in your community who can help answer your questions and help you to advocate for your child.
8. If you and the school disagree about what is best for your child and you cannot find common ground, then you may make a written request for mediation or a Due Process Hearing to help you get what you believe your child needs.

SAMPLE LETTER REQUESTING AN EVALUATION OF YOUR CHILD

[INSERT: date]

Dear [INSERT: Principal's name]

I am writing to request that my child, [INSERT: your child's full name and date of birth], be evaluated for special education services and/or accommodations granted under Section 504 and the Individuals with Disabilities Education Act (IDEA). I am concerned that [INSERT: child's name] is having difficulty and may need special help in order to learn.

For the last [INSERT: number of years] years [his/her] classroom teachers have noted that [he/she] has difficulty completing assignments, is experiencing problems with excessive impulsivity and/or is unable to sit still and stay focused. Please note that [INSERT: name of health care professional] has recently diagnosed my [son/daughter] as having Attention-Deficit/Hyperactivity Disorder

(AD/HD). [INSERT: name of health care professional] is concerned that [INSERT: child's name]'s AD/HD is resulting in decreased alertness in the classroom and may be significantly impacting [her/his] school performance, learning, and behavior. [NOTE: if your child does not have a diagnosis from a health care professional, you may still request an evaluation from the school. Simply skip this section or state that you, the parent, have concerns that your child is having attentional difficulties that you believe are impacting school performance, learning and/or behavior.]

I would like to meet with the people who will be doing the evaluation before my child is tested so that I may share information about [INSERT: child's name] with them. I understand that the evaluation is provided at no cost to me. I also understand that I must provide written permission for these tests to be administered and I will be happy to do so once I have received all the appropriate forms and an explanation of the process. I will also expect a copy of the written report generated by each evaluator so that I may review them before the IEP or 504 planning meeting.

I look forward to hearing from you at your earliest convenience so that we may begin preparations for the evaluation.

Sincerely,

[INSERT: your name, address and phone number]

MORE INFORMATION

IDEA Partnership www.ideapartnership.org

Parent Training and Information Centers www.taalliance.org/centers/index.htm

The Office of Special Education Programs www.ed.gov/about/offices/list/osers/osep/index.html

REFERENCES

- 1 Public Law 108-446, the Individuals with Disabilities Education Improvement Act 2004, was signed into law on December 3, 2004 as an amendment to the existing Individuals with Disabilities Act previously amended in 1997.
- 2 Students with AD/HD may also qualify under the Emotional Disturbance (ED) category of IDEA.

This What We Know sheet, designed to summarize various legal issues affecting the education of children with AD/HD, should not be construed as legal advice or a legal opinion on specific facts. Readers with particular questions should seek the assistance of their own legal counsel. Section 504 procedures may be different from state to state or district to district. To find out about district or state procedures, parents should contact their state department of education. For issues relating to Section 504, contact the Office of Civil Rights (OCR) by visiting www.ed.gov/about/offices/list/ocr/index.html.

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For further information about AD/HD or CHADD, please contact:

**National Resource Center on AD/HD
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Attention-Deficit/Hyperactivity Disorder**
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www.help4adhd.org

Please also visit the CHADD Web site at www.chadd.org.