



What Does the **NEW GUIDANCE** Mean for Students with ADHD?

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IF YOU WERE DREADING the beginning of another school year and the challenges of getting appropriate services for your child with ADHD, you should be reassured by the light that appeared at the end of the tunnel on July 26, 2016—the anniversary of the Americans with Disabilities Act. On that day, the US Department of Education released new guidance for public schools, the first such guidance addressing ADHD in many years. This document can change the way your child’s school treats students with ADHD. It is important that you know what it says and how it can impact your role as your child’s advocate.

CHADD, through its Public Policy Committee and Professional Advisory Board, met and communicated frequently with OCR over the last three years as OCR developed this new Guidance.
(See the Making a Difference column in the October issue of *Attention*.)



The Dear Colleague letter and Resource Guide on Students with ADHD issued by the Office of Civil Rights (OCR) of the US Department of Education on July 26 explains how schools should implement Section 504 for students with ADHD. OCR sent the guidance to every public school district in the country, and all school districts know they are expected to follow it. The Guidance will help teachers and administrators in elementary and secondary schools to better understand:

- their responsibilities under the law
- what their obligations are in addressing ADHD in the classroom
- their obligation to have a better understanding of how ADHD can affect a student’s access to education and need for specific individualized accommodations

As part of the Guidance Document on ADHD, OCR also provided a document titled, *Know Your Rights: Students with ADHD*.

What is Section 504?

Section 504 is a civil rights law that prohibits discrimination on the basis of disability in programs or activities receiving federal financial assistance, including public elementary and secondary schools and charter schools. The official name of the original act was known as Section 504 of the Rehabilitation Act of 1973, as amended.

Section 504 entitles every elementary and secondary school student—including every charter school student—who is found to qualify as a student with a disability (as defined in Section 504) to a free appropriate public education (FAPE). Under Section 504, FAPE is defined to mean the provision of regular or special education and related aids and services designed to meet a student’s educational needs as adequately as the needs of nondisabled students are met. Section 504 levels the playing field for students with disabilities.

Schools must evaluate a student, at no cost to the parent, if the district believes or has reason to believe a student has a disability and may need special education or related aids and services because of disability.

Under Section 504, a student with a disability is a student

- who has a physical or mental impairment that substantially limits one or more major life activities;
- who has a record of such an impairment; or
- who is regarded as having such an impairment.

Only students who have a “mental or physical impairment that substantially limits one or more major life activity” will have an individual plan.

Section 504 provides parents with procedural safeguards which includes the following:

- Parents must be provided notice upon the identification, evaluation, and placement of their child with a disability.
- Parents have the right to request and review their child's educational records.
- Parents have the right to “due process,” which means the right to appeal the school district's actions regarding identification, evaluation, or educational placement of a student with a disability. The school district must provide an impartial hearing before a hearing officer, allow the parent to have a lawyer at the hearing, and provide a review procedure. School districts must tell parents about their right to due process, notify them of any evaluation or placement actions, and allow parents to examine the student's records. If parents believe the school is violating Section 504, parents may contact the US Department of Education, Office for Civil Rights, at (800) 421-3481, (800) 877-8339 (TDD), or ocr@ed.gov. Parents may also *file a complaint with OCR* online at www.ed.gov/ocr/complaintintro.html.

One of the most important points the new Guidance makes is that Section 504 requires more than just accommodations, if necessary for the student's needs to be addressed.

NOW: Parents can use the New Guidance to remind the school how Section 504 applies to students with ADHD—and more. Schools that have knowingly failed to comply with Section 504 in the past may still continue to do so, but the Guidance arms parents and educators with strong statements that address some of the major areas of school districts' past noncompliance. The Guidance will also help better inform school district decisions about the application of Section 504 to students with ADHD. Further, the Guidance may help to inform hearing officers and courts when parents are unable to resolve disputes informally. What Section 504 requires school districts to do for students with ADHD:

- School districts must appropriately and timely evaluate and identify students suspected of having ADHD to determine if they are eligible under Section 504.
- School districts should not rigidly follow the steps of Response to Intervention programs to delay an evaluation and should not categorically require the collection of intervention data as a part of an evaluation.
- School districts cannot make parents responsible for any necessary elements or cost of evaluation. A medical assess-

ment is not required in order to identify a student as having ADHD for purposes of Section 504 eligibility, but if a school district decides a medical examination is necessary, it must be provided by the school at no cost to the parent.

- Evaluations must also include any possible coexisting disorders which may be related to ADHD and impact the kind of services a student may need.
- School districts must avoid making decisions about conducting an evaluation or a student's eligibility for Section 504 due to mistaken assumptions based on gender, race, or ethnicity.
- School districts must document, and provide, appropriate placement and services, *regardless of cost*.

Section 504 includes special education

One of the most important points the new Guidance makes is that Section 504 requires more than just accommodations, if necessary for the student's needs to be addressed. The Guidance clarifies that Section 504 services are not—and should not—be limited to services that are free or low cost to the school district, and can include services that are also provided under the Individuals with Disabilities Education Act (IDEA), such as special education or related services, if such services are necessary for the student to receive an appropriate education under Section 504. The Guidance also addresses the need for behavioral and executive function supports to improve focus and organizational skills for students with ADHD.

A student who is found to be ineligible under IDEA may still be eligible under Section 504 and should be referred to Section 504 for consideration of eligibility.

According to the Guidance, examples of a major life activity that could be substantially limited by ADHD include concentrating, reading, thinking, and functions of the brain. Therefore, if an evaluation finds that a student has ADHD, that student has an impairment for purposes of Section 504. **A student with a diagnosis of ADHD is presumed to be a student with a disability.** Extensive analysis is not required to determine if a student has a disability because schools must consider the presence of a disability broadly.

Mitigating measures, such as medication, extra tutoring, or unusual effort are not a basis for exclusion from eligibility: “A student may receive good grades, but only as a result of having extra time on exams, or receiving help at home in completing assignments, or studying for extraordinarily long periods of time. The student's need for these mitigating measures could be evidence that the student has a substantially limiting impairment.”

The new Guidance states that certain behaviors could indicate a student has ADHD and should cause a school district to consider conducting an evaluation. Any combi-

nation of these behaviors—or only one—could indicate the student has ADHD: considerable restlessness or inattention inappropriate for the student's age and grade level; trouble organizing tasks and activities; communication or social skill deficits.

The Guidance cautions that school districts might overlook students with inattentive-type ADHD because their behavior is less likely to be impulsive or disruptive. It states that the following behaviors could indicate a student has inattentive-type ADHD: significant difficulty beginning a task, organizing and recalling information, and completing assignments such as homework and multi-step class projects. School districts have an obligation to evaluate inattentive-type students.

The impaired major life activity need not be related to learning or school. Also, referral for evaluation should occur for behavior even if it is not related to academic performance. For example, students who are performing adequately academically, but are impacted by their ADHD in other ways or who have behavioral or social problems without specific academic difficulty, may still be eligible under Section 504.

Students with ADHD may be eligible due to problematic behavior, such as not turning in homework or talking out of turn, even if their grades are adequate.

High-performing students with ADHD may be substantially limited in a major life activity due to the time or effort the students must spend to read, write, or learn compared to students without ADHD.

The Guidance states that a student with ADHD may need behavioral and executive function supports and that a Section 504 plan for a student with ADHD might include support in organizing a task, getting started, and remaining engaged in a task. ④

MORE INFORMATION

To read the full Guidance and the Know Your Rights Document, go to:

<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201607-504-adhd.pdf>

<http://www2.ed.gov/about/offices/list/ocr/docs/dcl-know-rights-201607-504.pdf>

Ingrid Alpern, JD, LLM, is the co-chair of CHADD's public policy committee. She and co-chair Jeffrey Katz, PhD, had ongoing and active discussion with OCR throughout its process of developing the new guidance. They provided OCR with scientific research and knowledge about ADHD as well as best practices for educating students with ADHD in school.

Mary Durham, BS, is an educational consultant and a past president of CHADD. She was appointed by Governors Bush and Perry to the Texas Council of Developmental Disabilities, which she currently chairs. Mary is a Section 504 hearing officer and participates on CHADD's public policy committee.

Matthew Cohen, JD, has represented hundreds of children with disabilities in special education disputes and has been involved in cases throughout the United States. Cohen is past president of CHADD and continues to serve as a member of the public policy committee. He also serves on the public policy committee of the Learning Disability Association of America and is the long-time chair of the Illinois Attorney General's Advisory Committee on Special Education.

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