



**National
Resource
Center
on ADHD**
A Program of CHADD

www.Help4ADHD.org
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Ask the Expert

Department of Education Guidance Broadens Understanding of 504 Rights for Kids with ADHD



Matthew Cohen, JD

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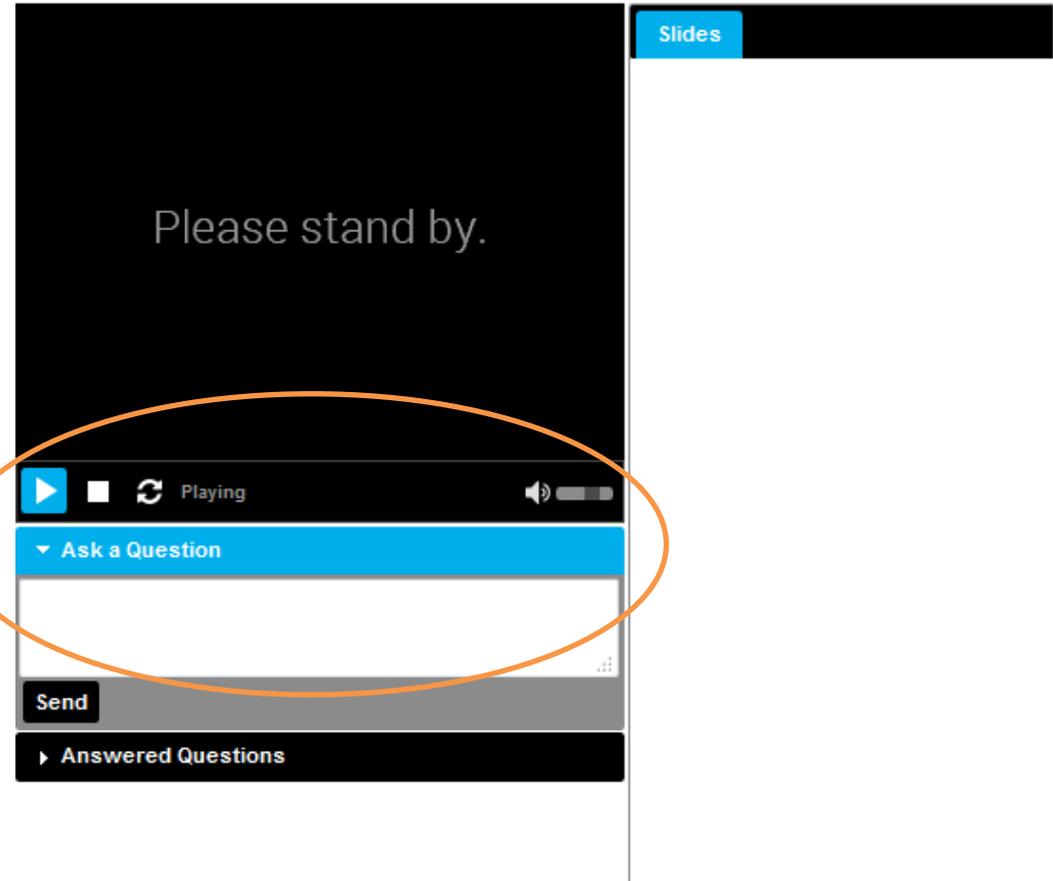
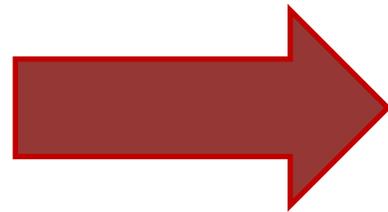


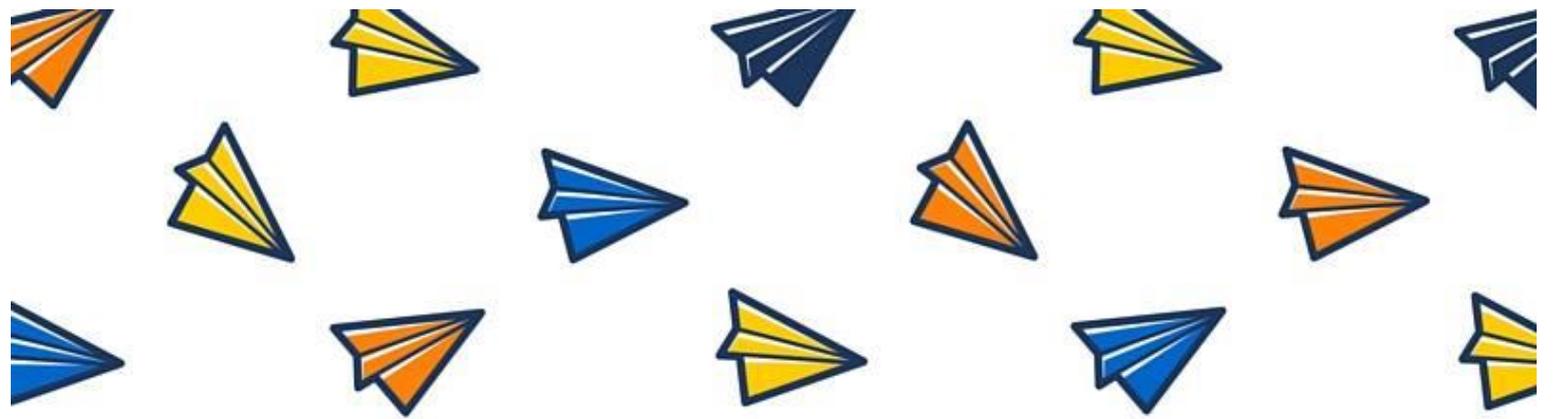
✓ **Slides available under resources**



✓ **Twitter feed: #AskADHD**

To Ask A Question:





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what direction to go ?**

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ADHD Information and
Resource Specialist



1-800-233-4050,
Mon-Fri, 1-5pm ET



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Expanded Rights for Kids with AD/HD-
The OCR Dear Colleague Letter
and Section 504
CHADD Webinar
by
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IDEA and Section 504

- ◆ IDEA is a funding statute- requiring all states to comply with its conditions for funding special education
- ◆ Section 504 is a civil rights statute requiring all recipients of federal funds to provide non-discriminatory services, including reasonable accommodations
- ◆ Key is leveraging school services to support kids despite reducing services

How Schools are Covered

- All states now accept funding through IDEA. As a result, all states and local school districts within each state are required to follow IDEA requirements.
- Section 504 applies to all entities which receive federal financial assistance, although Section 504 itself provides no funding. Because all public schools receive federal financial assistance, all public schools are covered under Section 504.

1. Eligibility - Who is Covered?

- IDEA creates 13 categories of disability, each of which has its own criteria. A student must be determined eligible under at least one of the categories in order to qualify for special education.
- Section 504 does not use categories for eligibility. Any student with an **identified physical or mental disability** may be eligible for special education if they meet all three criteria under Section 504

AD/HD and Tourette Syndrome

IDEA Regs Added ADHD & TS in '97 & 2006

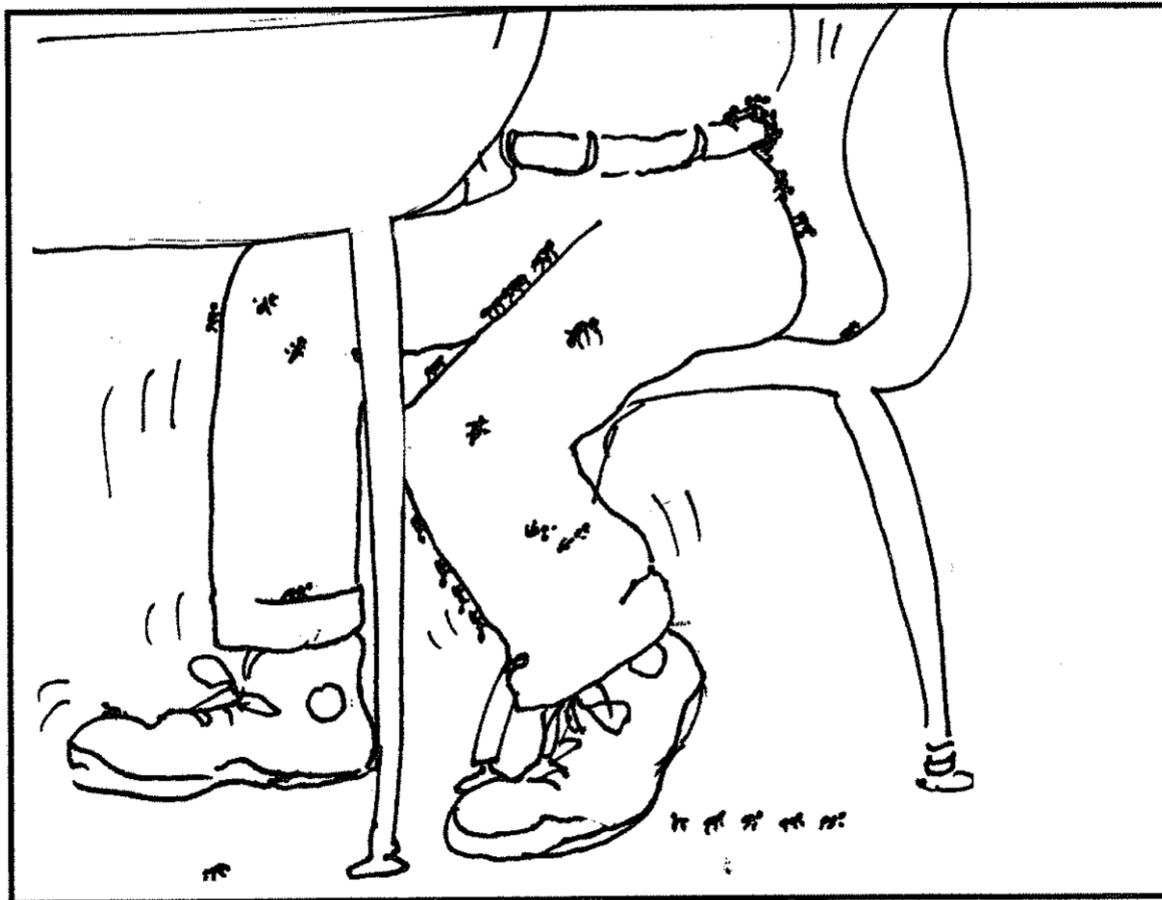
- ADHD added to definition of OHI in 97 and Tourette Syndrome added in 2006. OHI covers a variety of health impairments that result in limited strength, vitality or alertness, including limited alertness to educational tasks due to heightened sensitivity to environmental stimuli.

Both Recognized by OCR under Section 504

- As Section 504 does not require eligibility under a particular category, ADHD and Tourette Syndrome were already recognized as potentially eligible conditions under Section 504

Other Health Impaired

- ◆ Chronic or acute health condition such as asthma, diabetes, sickle cell anemia, **AD/HD or Tourette Syndrome**
- ◆ Results in Limited strength, vitality or alertness
- ◆ Includes limited alertness to educational tasks due to heightened alertness to environmental stimuli
- ◆ Adversely affects educational performance (34CFR 300.8 (c)(9))



AFTER A HASTY SPECIAL EDUCATION
PLACEMENT FOR BEHAVIOR PROBLEMS,
SCHOOL OFFICIALS WERE EMBARRASSED
TO LEARN THAT MARTY REALLY DID HAVE
ANTS IN HIS PANTS.

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Other Possible IDEA Eligibility for Kid with ADHD

Emotional Disorder- Must be Present:

Over a long period of time

To a Marked degree

Adversely affects educational
performance

Learning Disability-

Must involve processing disorder

May require RTI first (depends on
state)

All IDEA eligibility categories require:

- ◆ Meet criteria for specific category
- ◆ Disability adversely affects educational performance
- ◆ Child requires special education intervention

2. Differences in standards for how the impact of the disability is assessed

- Under IDEA, all categories other than speech and language impairment require that the child's disability adversely affect educational performance.
- Note that an adverse affect on educational performance could be in an area other than academics, e.g., behavior.
- Under Section 504, if the student's impairment substantially limits a major life activity, such as learning, working or caring for oneself, the student may be entitled to protection under §504

3. Different standards for what services must be needed by the student to qualify for eligibility

IDEA

- In order to qualify for special ed, the student must need some form of special ed instruction. However, this does not mean instruction must be in a self-contained or resource class, but can include specialized instruction within the regular education classroom.

Section 504

- A student with a disability may qualify for 504 protection if the student requires special education or related services. §504 does not require that the student need special education in order to qualify. For example, a student might qualify just due to need for preferential seating or a quiet room to take tests, or assistance from a nurse to take medication.

The Right to a Free Appropriate Public Education

- IDEA requires that all eligible students receive a free appropriate public education, including special education and related services which are necessary for a child to benefit from education.
- Section 504 also requires a free appropriate public education designed to meet the child's individual needs as adequately as the needs of students without disabilities are met.

Least Restrictive Environment

- IDEA requires that the child, to the maximum extent appropriate, be educated with children who do not have disabilities and that the child be removed from regular education only if and to the extent that even with provision of supplementary aids and services, the child cannot be educated satisfactorily in regular education.
- It also requires that the child be educated in the class he or she would have been but for the disability, unless the IEP requires otherwise and that, in any event, the child be educated as close to home as possible.
- Under Section 504, children with disabilities shall be educated to the maximum extent appropriate with children who do not have disabilities unless it is demonstrated that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily.

Long-term suspension or expulsion may only occur under both laws if the behavior is determined to not be related to the child's disability

- IDEA requires that a Manifestation Determination Conference be convened to determine if the child's behavior was caused by the child's disability. If so, regular education disciplinary exclusion may not be employed.
- Section 504 also requires that a Manifestation Review meeting be convened for this purpose.

The July 26, 2016 OCR Dear Colleague Letter

Does Not Have the Force of Law, but **SHOULD
BE GIVEN DEFERENCE BY SCHOOLS AND
THE COURTS**

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

What's so important about the Letter?

**THE TOP THIRTEEN
MESSAGES-**

**AFFIRMING, CLARIFYING AND EXPANDING
THE RIGHTS OF KIDS WITH ADHD**

1. Right to Evaluation and Identification

Districts must appropriately and timely evaluate and identify students suspected of having AD/HD.

2. Requires appropriate accommodations AND services at no cost to the family.

Districts must document and provide appropriate placement and services, regardless of cost. Section 504 requires more than just accommodations if needed for the students needs to be addressed.

3. Expands scope of mitigating measures

Mitigating measures, such as medication, **extra tutoring or unusual effort** are not a basis for exclusion from eligibility if the student's disability substantially limits one or more major life activity without those measures.

4. Ineligibility under IDEA Does Not Equal Ineligibility Under 504

A determination that a student is ineligible under IDEA doesn't mean that they may not be eligible under Section 504. The scope of eligibility under 504 is much wider.

5. A clinical diagnosis of AD/HD creates a presumption of eligibility

Diagnosis of ADHD means student has an impairment for purposes of 504 and creates presumption of substantial limitation of major life activity.

THIS IS HUGE!

6. High Academic Performance/giftedness does not exclude eligibility

Students that are high performing academically, but are impacted by their AD/HD in other ways and/or have behavioral or social problems without specific academic difficulty, may still be eligible for 504 protection. Referral should occur for behavior even if not related to academics.

7. EF difficulties and non-academic behavior/social problems covered

Students with AD/HD may also be eligible due to disruptive behavior, social skills issues, or problematic behavior such as not turning in homework or talking out of turn even if their grades are adequate

8. Kids with Inattentive Type or Ability to Hyperfocus Shouldn't be Ignored or Excluded

Schools have an obligation to evaluate inattentive type students and take into account extra parent effort and avoid discounting impact due to ability to hyper-focus for preferred tasks

9.RTI can't block eligibility

Use of RTI programs should not interfere with access to 504 protections. Schools should neither rigidly adhere to the steps of Response to Intervention programs as a predicate for evaluation nor categorically require the collection of intervention data as a part of an evaluation.

10. Schools can't make the parents responsible for their evaluation process

- District cannot make parent responsible for necessary elements or cost of evaluation
- Can't preclude evaluation or eligibility because parents can't access private doctors/evaluators
- Can't require parents to pay for any element of the evaluation process if required by the school to determine eligibility

11. Evaluation Process can't be discriminatory

School districts must avoid making decisions about evaluation or eligibility based on mistaken assumptions based on gender, race or ethnicity.

12. Medical evaluation is not required, but if schools want it, they must pay for it.

A medical assessment is not required in order to identify a student as having ADHD for purposes of 504 eligibility, but if a school district decides it is necessary, it must be provided at no cost to the parent. Further, extensive analysis is not required to determine someone has a disability because schools must consider the presence of a disability broadly

13. 504 Requires FAPE, not just accommodations

504 SERVICES ARE NOT AND SHOULD NOT BE LIMITED TO SERVICES THAT ARE FREE OR LOW COST TO THE DISTRICT AND CAN INCLUDE SERVICES THAT ARE ALSO PROVIDED UNDER IDEA, SUCH AS SPECIAL EDUCATION OR RELATED SERVICES, IF SUCH SERVICES ARE NECESSARY TO RECEIVE AN APPROPRIATE EDUCATION UNDER SECTION 504.

Under IDEA and 504 - Manifestation Determination

- ◆ If child being considered for cumulative suspension in excess of 10 school days or expulsion, school must convene manifestation conference to determine if behavior is directly related to disability.

New IDEA Manifestation Criteria

- ◆ If school failed to implement IEP and failure related to behavior, behavior automatically related to disability
- ◆ If IEP properly implemented must decide if behavior directly caused by disability

Consequences of manifestation decision under IDEA 2004 and 504

- ◆ If behavior not related to disability, school may apply regular discipline and suspend for more than 10 days or expel, but must still provide some service per no cessation rule.
- ◆ If behavior related, may not suspend more than 10 days or expel and convene IEP to review appropriateness of IEP and conduct FBA BIP

Advantages: IDEA v. 504

- ◆ 504-less stringent eligibility
- ◆ Less cumbersome regulations
- ◆ Less stigmatizing
- ◆ Less involved evaluation
- ◆ **504 Mandates Services Even When IDEA unavailable**
- ◆ IDEA-more stringent evaluation
- ◆ Easier access to full continuum
- ◆ Greater/specific parent rights & procedural safeguards
- ◆ Heightened due process safeguards

Resources

www.mattcohenandassociates.com

www.nami.org

www.ldonline.org

www.chadd.org

www.ndrn.org

www.copaa.org

Sources of information

- See the CHADD website: www.chadd.org .
- On IDEA, get the regulations at www.edpubs.org
- For information on the Section 504 rules, check: www.ed.gov/print/about/offices/list/ocr/504faq.html
- Get information from the US DOE at:
 - www.ed.gov/parents/needs/speced/resources.html
- Get wide information on all special ed issues at: www.nichcy.org (National Information Clearinghouse for Handicapped Children and Youth)

Advocacy Strategies

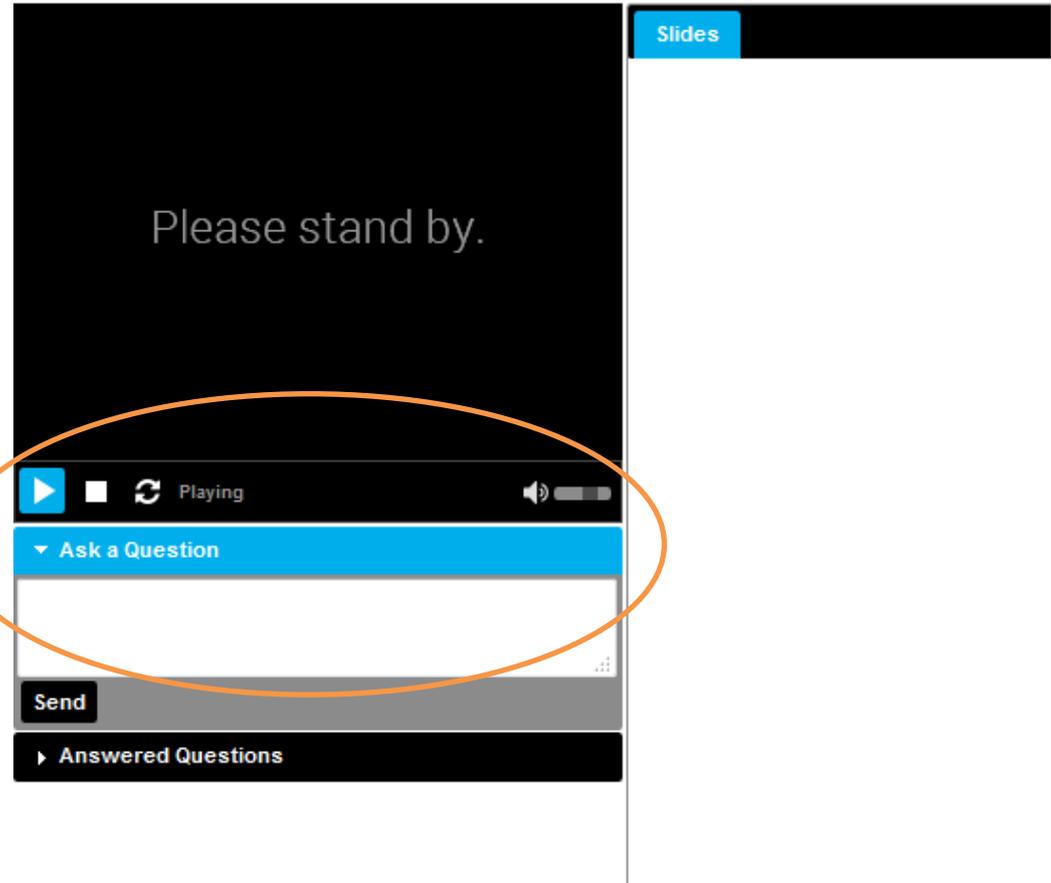
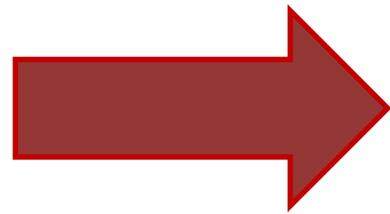
- ◆ A Guide to Special Education Advocacy: What Parents, Advocates and Clinicians Need to Know

By Matt Cohen

Jessica Kingsley Press, 2009

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