



CHADD and the National Resource Center on ADHD

Ask the Expert Chat Series

November 23, 2010 – When ADHD Goes Bad: Protecting Your Child’s Rights in Disciplinary and Criminal Settings

Moderators – NRC Staff

Expert – Robert Tudisco, Esq.

Moderator 1: Welcome to today’s Ask the Expert chat sponsored by the National Resource Center on ADHD (NRC). The NRC is a program of CHADD and is funded by the US Centers for Disease Control and Prevention (CDC) to provide science-based information on all aspects of ADHD. Today’s topic is, “When ADHD Goes Bad: Protecting Your Child’s Rights in Disciplinary and Criminal Settings.” Our expert this afternoon is Rob Tudisco.

Robert M. Tudisco is a practicing attorney, freelance writer and an adult diagnosed with ADHD. He is currently the Executive Director of the Edge Foundation and is a past member of CHADD’s National Board of Directors. He is a current member and an immediate past-chair of CHADD’s Public Policy Committee.

Since his diagnosis, Tudisco has researched and written extensively on the subject of practical coping mechanisms and systems for adults with ADHD. He is a frequent resource for the media about ADHD, often addressing the over-representation of individuals with ADHD in the juvenile/criminal justice system compared to the general population.

Rob received his Juris Doctor at the Fordham University School of Law in 1989. He subsequently served four years as an Assistant District Attorney in Bronx County, NY. For the last twenty years he has practiced criminal and civil litigation as a practicing attorney in the State of New York.

The material presented during this online chat is provided to assist participants in broadly understanding the rights of individuals with ADHD. It is provided for educational purposes only and is not meant to provide specific legal advice. If you have questions regarding the legal rights of your child, you should contact a licensed attorney in your area.

Please note that questions with personal information may be edited to generalize the benefit for all participants.

Welcome Rob! Thank you for joining us this evening! Now, for our first question

Rob Tudisco: Thank you for having me. Welcome all

Lens: My son has an IEP and is a freshman in high school. He was recently suspended for “ridiculous” behaviors in swim class (he mooned his friends going off the diving board). He always feels horrible after doing such things, but is having a hard time with the impulsivity which has increased as a teenager. Is there a way to change the IEP in order to help support him and not suspend him? Would meeting with his counselor one time a week be helpful to keep him on track?

Rob Tudisco: Students who are classified for special education and have an IEP have an extra layer of protection compared to other students. The law requires that if a classified student is suspended for more than 10 days, a special hearing must take place. The hearing is conducted in two parts. First, to determine if they did what they are charged with and second to determine if the conduct was a manifestation of their disability.

If a manifestation determination is made, the school is required to do a Functional Behavioral Assessment (FBA) and to put into place a Behavioral Intervention Plan (BIP) to prevent the behavior from reoccurring. The school must also review the IEP to see if it is appropriate and if it is being followed.

If your son's behavior has not risen to that level, you still can ask (ALWAYS IN WRITING) for an IEP meeting at any time to discuss his behavior and to seek a behavioral assessment and intervention plan. The key here is to be proactive and not wait until something goes terribly wrong.

Banjo: Can the school require my 16 year old to answer questions from the police without notifying me. He has an IEP.

Rob Tudisco: This is a good and complex question. The school may ask students questions about their behavior without parents present, but the police may not. The problem is when the police officer or school/police liaison officer conducts questioning in a criminal investigation through school personnel.

It is important that if you are notified by the school, that you immediately take action and involve an attorney to protect and preserve the rights of your child. In NY for example, a phone call from an attorney who states that they represent the child is enough to prohibit any further questioning, but unfortunately, many parents are reluctant to retain an attorney right away, or in many cases they cannot afford counsel. In that case, counsel will only be appointed when the criminal case is brought before a judge.

My advice is to get to the school immediately and get your child out of the line of fire. Once they are away from questioning, you have the breathing room to seek an attorney and you should look for one who has experience in both criminal and disability or special education law.

Alan: You mentioned earlier that students with an IEP have an extra layer of protection compared to other students. Does the same protection apply to students with a 504 plan?

Rob Tudisco: 504 does not carry the same procedural safeguards as IDEA and there is no right to a manifestation hearing. However, you should seek to meet with the team and either convert the 504 to an IEP if necessary, or at the very least, ask the school to work with you to assess the behavior and develop a behavioral intervention plan. The key here is not to use ADHD as an excuse, but to understand why the behavior occurred and prevent it from happening in the future.

Moderator 1: While we are waiting to learn more about communicating with the school, please see our [What We Know Sheet #4: Educational Rights for Children with AD/HD in Public Schools](#) found in the list at www.help4adhd.org/en/about/wwk.

Olivia: when a child w/ ADHD is improperly restrained in school what are his rights? What recourse does a parent have if the child was injured?

Rob Tudisco: Rules with respect to restraint and seclusion are fortunately being revised to give students more rights. My experience is that in most cases where restraint is used, it is because the current placement or behavioral plan is not appropriate. I would immediately seek to have the IEP or 504 plan reviewed.

Your child's disability, or even his behavior does not give any school the right or an excuse to injure them. There is nothing in the law that would prevent you from seeking relief from the school in a civil action for either monetary damages or injunctive relief. You can also submit a complaint to your State's or the U.S. Department of Education if you believe that the practices of the school are particularly onerous.

Brown: My son is a sophomore in high school and has begun hanging around a bunch of kids that you could label the "wrong crowd." We are aware of marijuana use and some reports of shoplifting. How do I best approach this with my son BEFORE it turns into a bigger issue? Specifically, I do not want him around these kids.

Rob Tudisco: This is a very complicated question. Legally, you have the right to speak to someone at the school and discuss the concerns you have about the behavior of other students and/or drug use at the school. From a parent's perspective, it is important to be as open as possible with your child about their ADHD and how much more susceptible they may be to self medicating.

As with all students, it is important to be as open as possible with them about their ADHD and to let them know how dangerous drug use can be; especially if they are taking medication. Active problem solving with them can be very empowering, especially since ADHD permeates their sense of self esteem.

I would also involve their mental health provider in the discussions. That may reduce tensions between you and your child. Another offshoot of this issue is the Diversion of ADHD medications in high schools and college campuses around the country. Many students carry a surplus of stimulant medication and

tragically share it with friends. You should make your child understand that ADHD stimulant medication is a Schedule II controlled substance and it is illegal and a felony to sell or share it with others. The law does not require that money change hands for a sale to be recognized. Students need to safeguard their medication.

Moderator 1: Want to receive well-rounded comprehensive knowledge about ADHD? Parent to Parent courses offered in local communities and online, provide educational information and support for individuals and families dealing with ADHD and learning to navigate the challenges of ADHD across the lifespan. Learn more about our [Parent to Parent classes](#)!!!

ADHD_Goddess: When a juvenile with ADHD has a court case, what is the best way to inform the legal team and/or judge about his ADHD. Is it reasonable to think that they will take his diagnosis into account during a court case and a subsequent ruling?

Rob Tudisco: The first and most important decision you should make is who you chose to represent your child in a criminal case. If you believe that their antisocial or criminal behavior stems from their ADHD, it is important to get an attorney who understands ADHD, education law and criminal procedure.

If you have used an attorney in the past for your child's IEP or 504 process, contact them first, if they don't have a working knowledge of criminal procedure, they can help you find an attorney who does and one that they presumably have worked with in the past. This is especially true in cases where a student is arrested for activity that occurs in a school. When this happens there is a disciplinary process that takes place along with the criminal case.

Never assume that anyone knows about, or understands ADHD, and certainly how it manifests itself in your child. Educate the lawyer, the court and the prosecutor and anyone who will listen. While there are youth courts, and mental health courts, there are only a small number of mental health courts that operate for juveniles. It is important that you speak up for your child and teach them how to speak up for themselves.

It is also important to remember that you should have a good grasp on counseling or diversionary programs that may avoid them having to go to jail or a youth facility, but more importantly, it is crucial that if they have to be incarcerated, that they still get access to special education services and supports and whatever counseling they need.

Even when incarcerated, students have a right to a Free Appropriate Public Education (FAPE). This can be very difficult to come by in a juvenile detention facility or worse an adult correction facility.

Jenc: My teenager was caught up in a drug incident and is currently in an alternative placement for three weeks. The principal pressured my impulsive unmedicated ADD child to confess to drug use. I am glad we are now aware of the use, but the consequences are a bit extreme. What should we have done to have kept out of the alternative setting?

Rob Tudisco: There are two possibilities. Either your child should have had some type of private placement for his or her needs, or the IEP or 504 plan was not adequately addressing their needs at the current school.

The actions of the principal in this situation are often done to make harsh examples out of students in order to enforce a strict no tolerance policy. You and your child's mental health care professional should know better than anyone what type of punishment or intervention will address the underlying cause of the problem as opposed to punishing a symptom.

Even in cases where a student is classified for special education, and where a manifestation determination is required, they can still be punished in cases involving drug possession or trafficking, or violent crimes. This exception does not eliminate the school's obligation to provide a behavioral assessment and an intervention plan. You should assert that and try to convince the school to work with you and your child to prevent this behavior from continuing.

In the case of drug use, voluntary treatment programs will go a long way to show the school (and a prosecutor) that your son or daughter wishes to get back on the right track.

Moderator 1: Before our next question, you should know that the NRC produces a series of information sheets called, "[What We Know](#)," or WWK for short. All of these WWK sheets are found at www.help4ahdh.org, in the "[About ADHD](#)" section, including our [WWK #20A](#) and [#20B](#) on AD/HD and Teens.

Maria: I have been told that I can only obtain a 504 plan for my son if he has failing grades. Is this accurate?

Rob Tudisco: That is a common question and the answer is NO. That is not accurate. Case law is clear that academic performance alone is not an indicator of whether or not your child needs services and/or supports from the school. The test is whether or not their disability "substantially impairs a major life activity". You should be prepared to establish not just that they have ADHD, but how it impairs their educational experience.

A good and fair tactic is to use the school's rules to establish this. Each year, the school sends out their code of conduct or behavior in a very lengthy document or a booklet. Your child is responsible for complying with many, many rules and regulations. If you pull out this booklet and read it, you will see that there are many things that are expected of your child that have nothing to do with academics. They must be prompt, courteous, well groomed, well behaved and respect authority etc. Most of these rules fall under behavioral issues that have nothing to do with academic performance. Furthermore, even if their grades are good, they may have difficulty with organization, time perception and/or management. These are all significant things that can manifest from ADHD.

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Mbearwcub: Hi, I recently was found guilty of unemployment fraud and I tried to explain that I got it mixed up and it was a mistake. My trouble with attention to detail has gotten me into legal trouble. How can an individual with ADHD help the legal system to understand that ADHD is a big part of this case?

Rob Tudisco: One of the components of fraud is the actual intent to defraud. If you took the actions that you were charged with, but it was not done with the required intent, then you may have a way to defend yourself in the case. It is important that you educate your attorney about ADHD and how it manifests itself in you. You should also execute releases so that he or she can speak with your doctor to get information about how your ADHD manifests itself. This will be very useful in defending you.

Olivia: you mentioned "youth courts" and "mental health courts" in one of your earlier responses. How can a parent/legal team ensure that their child's case is heard in one of these institutions rather than a criminal or juvenile court. Is this something that a parent/legal team has any control over or is it all up to the prosecutor?

Rob Tudisco: Mental health courts were established to address the gross overrepresentation of people with mental illness who are not only incarcerated at an alarming rate, but are typically incarcerated up to five times longer than individuals without mental illness. The system was modeled after the successful drug court model.

It is an excellent program and is currently in over 250 jurisdictions. There are, however holes in the system. First of all, it was designed as an adult model and not for juveniles. This is a huge problem in that many individuals enter the adult system after the juvenile system. Not taking these individuals into account is like bailing out a boat without fixing the hole in the bottom. There are some jurisdictions that are widening the model to accept juveniles, but it is a very small amount. I believe there are only currently 30 or so juvenile mental health courts.

The second issue is that while the understanding in these courts is provided as a team approach, the defense bar, in practice is often not a part of the team. There are programs to educate judges and prosecutors, and even some public defenders, but they are a small percentage of the defense bar. It is important that the defense bar be integrated into this system and educated about disabilities and diversionary programs so that they can actively protect the rights of individuals with mental health disorders.

The defense attorney has the first contact with their client and is supposed to advocate for them. It is they who should have the best understanding of their clients' special needs so that they can flag their cases for screening and appropriate attention. Parents should also press for this and educate their children's attorneys. Its importance cannot be stressed enough. You should not wait and hope a judge or prosecutor will protect your child's rights.

Moderator 1: [Being a CHADD member](#) not only provides valuable members only benefits, such as Attention magazine, to you and your family; it also supports CHADD's work on behalf of individuals with ADHD at the local, state, and national level. [Join CHADD today.](#)

Lens: Specifically, what do you think kids with ADHD need to know to protect themselves?

Rob Tudisco: This is an excellent question. Kids need to know about their ADHD and should not hide from it. Secrecy breeds shame and they must have a working knowledge of not only ADHD in general, but how it affects them. This is important so that they are in a position to advocate for themselves. Self advocacy must be taught in the home, because when these children go off to college, the law changes and they are not required to be given services and support unless they self report their disability and ask for services and reasonable accommodations. If they don't do this, they have little recourse if they fail, even if you can link it to their ADHD. They have to be proactive and self report and know what services they need and ask for them.

Moderator 1: Help CHADD help those affected by ADHD! As a non-profit organization, CHADD relies largely on membership dues and donations from individuals to support much of its work in serving the needs of people with ADHD. Please consider CHADD in your 2010 financial giving plans ... especially in your end-of-year giving plans. CHADD's website has more information, and you can [donate online](#) today!

Ivydwilson: My daughter (8) was sent to the principal's office today for being disrespectful and not obeying. The teacher and principal are telling me that the behavior is not ADHD related, possibly ODD. Is there protection for kids with this? How can the school respond appropriately if they really cannot help their defiance? Thank you.

Rob Tudisco: It is important that you learn as much as you can from this information. First of all, approximately 65 to 70% of people with ADHD also have a co-occurring condition and Oppositional Defiant Disorder (ODD) is one of the more common ones. Clearly whether it is the ADHD or the ODD, or more likely both, that is operating here, it seems to be a direct manifestation of your child's disability. Even if she has not been suspended for more than 10 days, you should seek to have this looked into and for the school to work with you to assess her behavior and establish an intervention plan.

Pom: how can we protect children that are impulsive therefore continually in trouble from being labeled a bully?

Rob Tudisco: When it comes to antisocial and criminal behavior committed by a child or adult, the culprit usually is impulse control. These are students or adults who know the difference between right and wrong, but because of a disorder that affects the part of the brain that regulates executive functioning, they are unable to control their impulses. Knowing this about your son or daughter and being proactive to address it is the key. Ask for a functional behavioral assessment and a behavioral intervention plan. Understand the warning signs of their behavior, especially when they are bored and work with their teachers to head this off before things go horribly wrong or get dangerous.

Olivia: A family I know is going through a terrible time right now. Their son was just dismissed from his university for "sharing" his ADHD medication with other students in his dorm. I believe there are criminal charges being filed against him. The family has an attorney for their son though I am not certain how knowledgeable this person is w/ regard to ADHD and the impulsiveness that comes with it. Do you have any words of wisdom for this family?

Rob Tudisco: The best wisdom is to educate the attorney about ADHD. This is unfortunately a common problem that is rampant in high schools and college campuses. In many cases, when kids go off to college, they decide on their own that they need their medication less often than it was given by their parents. At the end of the month, they often have a surplus of medication when the prescription is refilled and either lend, sell or socially use the excess. This is very dangerous. Any medication should only be taken when prescribed and supervised by a doctor.

It is important to educate students about the legal, administrative and medical problems that can arise from diverting their medication. They are subject to prosecution, administrative discipline or expulsion and could unwittingly participate in a medical tragedy if someone has an allergic reaction or improperly uses their medication.

Make sure that the parents provide as much information to the attorney about ADHD and its symptoms so that he or she can effectively advocate for their child including executing releases so that the doctor can educate them as well.

Moderator 1: Missed part of the chat? Past chat transcripts are available to [CHADD members](#) as a benefit.

Thanks to everyone for all your questions! While we try to post as many specific questions as possible, we also try to post questions about different issues. We appreciate your patience and will continue trying to get through as many questions as possible in our time remaining

Deb: Is there any advantage of having multiple diagnoses mentioned in an IEP? Son has IEP based on formal diagnosis of anxiety but current IEP only mentions that he had been on ADHD meds and I haven't pushed for the "formal" diagnosis.

Rob Tudisco: While it would be helpful for all of the diagnoses to be listed, what is more important than the actual diagnosis when it comes to the student is the actual deficits that the disorder(s) cause. A thorough educational evaluation or a neuropsychological evaluation with extensive testing will show where a student needs support most and really should be a blueprint for an IEP or a 504 plan.

The diagnosis itself is somewhat illuminating, but the actual testing results and what they mean in terms of developmental deficits are much more important when asking for services. It is also important to know what you're asking for and why, before you go into the process.

Don't assume the school will know or provide what is necessary. No one knows your child like you do except for one person, your child. Speak to them and involve them in the process. It will be tremendously empowering for them.

CY: My 10 year old son's grade 5 teacher recently evacuated the classroom because my son was throwing his pencil at a wall repeatedly. The teacher said he felt the other children's safety was at risk. My son was not in a rage nor has he ever hurt another student with an object or done anything to warrant this rather dramatic reaction. I feel the teacher should have first asked my son to go to the office. I am a bit taken aback. Now his peers have an elevated idea that my son is possibly a dangerous child and my child has been publicly humiliated. My son is identified as ADHD and an IEP is underway. Should I do anything about this? What can I do?

Rob Tudisco: While it appears that the teacher in this instance did overreact, the last thing anyone would want would be to wait until someone was hurt. Identifying the behavioral issues, whether they stem from impulsivity to boredom or ODD, is crucial to preventing them from occurring in the future. Let the school and the teacher know that you want to do everything you can to make their job easier. In the end, if you don't think that teacher is a good fit, see if you could have your child put in another class. The key is understanding where the behavior comes from and working with the school and your child to head it off or prevent it from happening. That is also a crucial component that needs to be put into the IEP that is underway. There should be a significant behavioral component built in based upon this incident and the potential for others like it.

Moderator 1: This will be our final question.

ADHD_Goddess: Where is a good place to find a knowledgeable attorney with expertise in disability/special education but also criminal law?

Rob Tudisco: That is a tougher question, but an excellent one. There are several places you can go. First of all, each CHADD chapter usually keeps a resource directory of attorneys, advocates and mental health care providers. If you go to the chapter locator section of the website you can find your local chapter. Second, there is another organization called The Council of Parents Attorneys and Advocates (COPAA). their website is www.copaa.org. They also have a directory of disability attorneys around the country.

While you may not always find an attorney that does both. It is important that a special education attorney be able to work well with a criminal defense attorney if necessary and will be open to doing that. I am a little bit of an exception in that I was a criminal defense attorney who started doing special education work after my diagnosis, but I have been trying to educate attorneys around the country to be able to do both and there are more and more doing that each day. Don't be afraid to ask questions about their background and their understanding of the special needs of their clients. Starting with a disability attorney that understands ADHD and asking them for a criminal defense attorney that they feel comfortable with is also a very good idea. I hope this has been helpful. Thank you

Moderator 1: Rob, thank you for your informative responses! Your insight will help families to be proactive before a disciplinary or criminal situation arises. Thank you to all our participants and we wish everyone a wonderful Thanksgiving!

If you have a question that was not answered today, please contact us online (National Resource Center's Web site at www.help4adhd.org) or by phone (800-233-4050) between 9AM and 5PM EST and one of our health information specialists will respond.

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The views expressed in this chat are those of the guest expert and do not necessarily reflect the official policy or position of CHADD (Children and Adults with Attention-Deficit/Hyperactivity Disorder), the National Resource Center on ADHD, or the CDC.

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