Educational Rights for Children with ADHD in Public Schools

Two federal laws guarantee a free appropriate public education (FAPE) and provide services or accommodations to eligible students with disabilities in the United States:

1. Section 504 of the Rehabilitation Act of 1973 (called Section 504), as amended
2. Individuals with Disabilities Education Act (called IDEA)

Section 504 and IDEA are the laws that provide special education, other services, and appropriate accommodations for eligible children with disabilities in the United States. Individual states may also have laws governing these matters. When state laws and federal laws are different, schools must follow the federal laws, unless the state law provides the child with more rights or protection. These two federal laws also say that children with disabilities must be educated as much as possible with children who do not have disabilities.

But there are also differences between Section 504 and IDEA. Parents, health professionals, and teachers should know what each law provides so that they make the best choice for the child.

Which One is Right for My Child?

There is no one "right" choice for every child. Seeking services under Section 504 or IDEA will depend on what the child needs and the degree of impairment demonstrated in the educational environment.

For students who will be able to learn with simple accommodations or only minor changes to the child's day, Section 504 may be a good choice. Receiving services under 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 or more intense range of services, IDEA may work better. IDEA also provides parents with more rights and responsibilities to actively participate in the educational decisions about their child. Children who do not qualify for IDEA may qualify for Section 504, depending on their degree of impairment. While the federal law is the same, the procedures for implementing Section 504 vary greatly from state to state, and even from one school district to another within the same state. It is important to know how your state and school district implement these federal laws.

Section 504

Section 504 is a federal civil rights statute that says schools cannot discriminate against children with disabilities. It says that schools that receive federal dollars must provide eligible children with disabilities with an equal opportunity to participate in all academic and non-academic services the school offers. The school must also

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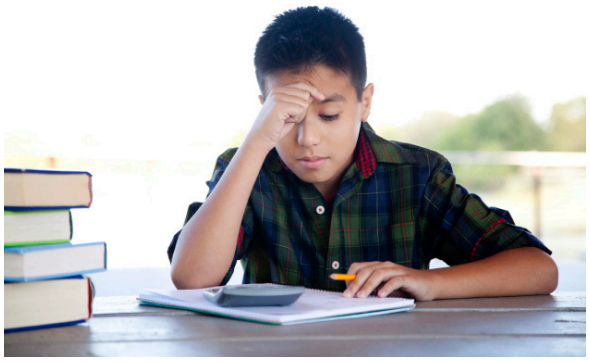
provide appropriate accommodations based on their individual needs.

These accommodations are often simple changes that can help the child with the 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. Students who are eligible to receive services under Section 504 receive instruction through the regular education curriculum and at the same level as their peers without disabilities. Students under Section 504 must also participate in state required assessments.



Who is 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 activities in addition to walking, talking, breathing, caring for oneself, etc. Additional major life activities added by the 2008 reauthorization of the Americans with Disabilities Act (and now called the Americans with Disabilities Act Amendments Act [ADAAA]) include such things as reading, concentrating, thinking, communicating with others, and major bodily functions.

To qualify under Section 504, a child's disability must be serious enough, or "substantially limiting," that the child needs specialized services or accommodations. All determinations of substantial limitation must be made without regard to the "ameliorative effects of mitigating measures." This means that the question of whether or not a child has a "substantial limitation" in a particular area is answered before, and not after, any intervention for that limitation is implemented. "Mitigating measures" includes such things as medication, assistive technology, learned behavioral modifications, psychotherapy, and/or reasonable accommodations. Children covered under Section 504 are usually children with less serious disabilities, or children who do not otherwise qualify for services under IDEA but still have a disability that is substantially limiting in the educational setting.

What Does Section 504 Provide?

If a child is determined to be eligible under Section 504, the school must develop a Section 504 Plan. The plan must include appropriate accommodations, evidence-based interventions, and/or related services that are also scientifically or research-based. The plan must provide the eligible child with an equal opportunity to succeed based on the child's individual needs when compared to same age, non-disabled peers. This is defined as a "free appropriate public education" (FAPE) under Section 504. (Although similar to FAPE through the IDEA, FAPE through Section 504 is an equal opportunity standard, whereas it is an educational benefit standard under IDEA.) Many mistakenly think that a Section 504 Plan is a standard checklist or form used for all eligible children. It isn't. While a form or checklist may be a helpful starting point, a good Section 504 Plan is developed to meet the child's specific, individual needs and not merely some template that the school district may have available.

Accommodations should be documented in the written Section 504 Plan (sometimes referred to as an Individual Accommodation Plan, or IAP, and not to be confused with an Individualized Education Program, or IEP). Here are several examples of appropriate accommodations that might be included in a Section 504 Plan for a child with ADHD:

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, free from distractions.
3. Providing clear and simple directions for homework and in-class assignments.

4. Giving tests in a quiet place, breaking tests into small pieces, modifying test format, and/or providing extra time.
5. Using audio recording devices or giving the student a copy of notes.
6. Using positive behavioral intervention techniques, including positive reinforcement.
7. Having a nurse or administrator oversee a student's medication administration and/or monitor a medication's effects.
8. Meeting with the school counselor to work on academic and/or behavioral challenges.
9. Creating a communication 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, doctors' notes if available, 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). A medical diagnosis is NOT required under Section 504. Once a child has been deemed eligible for accommodations, a Section 504 Plan is then developed by a Section 504 committee. Before any significant changes are made to an existing plan, the child should be evaluated again. A significant change in placement includes changes due to disciplinary actions longer than 10 days as well as changes that result from moving from one grade to another.

Parent participation is not an entitlement right under Section 504 as it is under IDEA. Depending on the procedures used by your local school district, parents or legal guardians may or may not have a right to active participation or decision-making through Section 504. Parents should check with their child's individual school district to determine what their procedure is for implementing Section 504.

Discipline under Section 504

Students with disabilities under both Section 504 and IDEA are provided with special procedures in situations involving disciplinary removals from their regular educational setting. Discipline procedures under Section 504 are similar, but not identical, to discipline procedures under IDEA. Students with a Section 504 Plan may be suspended or expelled in the same manner as any child without a disability for up to 10 school days. After removals of 10 consecutive days, or a pattern of short term removals amounting to 10 days or more, a meeting (called a manifestation determination) must be held to determine if the behavior subject to disciplinary action is linked to the child's disability. If there is a direct link between the behavior and the disability, the child may not be sent to a disciplinary or alternative education placement. If there is no link between the behavior and the disability, the child may be disciplined in the same manner as any other child without a disability. There are two exceptions to this rule.

1. If a child who is being served by Section 504 is caught "currently engaging in the use of illegal drugs or alcohol," the child forfeits all rights and procedural protections under Section 504, including the right to a manifestation determination, and may be disciplined in the same manner as any other child without a disability.
2. A child caught in possession of a firearm in any manner may be immediately removed to an alternative education placement where a manifestation determination must be conducted within 10 school days. If there is a link to the disability, the child may still be removed for up to 45 school days. If there is no link to the disability, the child may be disciplined in the same manner as any other child without a disability.

IDEA (Individuals with Disabilities Education Act)

The Individuals with Disabilities Education Act (IDEA) is the federal law that provides special education and related services needed for an eligible child with a disability to benefit from the child's education. Services received under IDEA are often referred to as "special education." An Individualized Education Program (IEP; sometimes called an Individualized Education Plan) is designed specifically for each

eligible child with disabilities to provide a free appropriate public education (FAPE).

Who is Eligible?

A child is eligible for services under IDEA if he or she is identified with a qualified disability and, "by reason thereof," needs special education and related services. A child with ADHD may qualify if the ADHD seriously impacts the child's learning and/or behavior at school. Some children with ADHD 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 ADHD will qualify under the Other Health Impairment (OHI) category. They may also qualify under Specific Learning Disabilities (SLD) or Severe Emotional Disturbance (SED).

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

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. 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 ADHD qualifies under IDEA, the child receives an Individualized Education Program (IEP). The IEP is a written document that includes specific goals for the child based on the child's current level of performance. The IEP should state the educational placement, and it should specify which services will be granted, when they will be provided, how long they will last, and how frequently they will occur. It should also specify the way in which the child's progress will be measured.

For a child whose behavior prevents learning or interferes with 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 class work, homework, and behavior problems. Parents or the school can ask for changes to 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.

Evaluation

A complete evaluation is required to see if a child is eligible for special education under IDEA. The school must have written authorization (informed consent and signature) from a child's parent or guardian before they can evaluate the 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 results of the evaluation performed by the school district, they may be

entitled to have an independent evaluation conducted at no cost to them [cf. 34CFR 300.502(b)(1-4)].

Discipline Under IDEA

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 per school year.

After 10 days, a meeting (called a manifestation determination) must be held for a student with an IEP to see if the behavior was caused by or had a direct and significant relationship to the 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 bodily injury to self or others may be immediately moved to an alternate educational placement (AEP). Schools must then conduct a manifestation determination. If it is determined that the behavior does have a link to the student's disability, then the student may remain in the AEP for up to 45 school (not calendar) days. If no link is found, then the student may be removed for the same number of days as a non-disabled student.

Working with the School

Parents, schools, and teachers should work together to make sure that children learn all they can. Communication and collaboration between home and school is very important when a child needs extra help at school. If your child has ADHD, CHADD and the National Resource Center on ADHD suggest that parents who think their child might require services or accommodations do the following:

1. Ensure that your child's ADHD treatment plan is in place and being followed.
2. Meet with your child's teacher(s) to share your concerns.
3. Ask teachers to write down the learning and/or behavior concerns your child has and to give you a copy of that list.
4. Request an educational 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. (See the Sample Letter on the next page.)
5. 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 strengths and what you think might help your child.

6. Follow up each meeting with correspondence (letter or email) documenting what took place. List the items you agree with and the items you disagree with and say why. Keep copies of all correspondence with your child's educational file.
7. Remember that the results of any evaluation are not final. You have the right to appeal the results. The school must tell you how to appeal.
8. 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.
9. 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.

10. Consider taking CHADD's Parent to Parent course, which provides in-depth information about both IDEA and Section 504, as well as other important information for any parent of a child with ADHD.

This information sheet, designed to summarize various legal issues affecting the education of children with ADHD, 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 school district to school district. To find out about district or state procedures implementing IDEA, parents should contact their state department of education or statewide parent training and information center (PTI). For issues relating to Section 504, contact the Office of Civil Rights (OCR.)

For More information

US Department of Education:

- Building the Legacy: IDEA 2004
- The Office of Special Education Programs

IDEA Partnership

Center for Parent Information & Resources

National Disability Rights Network

Parent to Parent: Family Training on ADHD® (CHADD)

Sample Letter to Request an Educational Evaluation of a Child with ADHD

[INSERT NAME OF PRINCIPAL]
[INSERT FULL NAME OF CHILD'S SCHOOL]
[INSERT SCHOOL ADDRESS]

[DATE]

Dear [(DR., MR., MRS. OR MS.) INSERT PRINCIPAL'S LAST NAME]:

I am writing to request that my child, [INSERT CHILD'S FULL NAME AND DATE OF BIRTH], be evaluated for special education services and/or accommodations granted under Section 504 or 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 [NUMBER] 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 AND CREDENTIALS OF HEALTH CARE PROFESSIONAL] has diagnosed my (son/daughter) as having Attention-Deficit/Hyperactivity Disorder (ADHD). [INSERT NAME OF HEALTH CARE PROFESSIONAL] is concerned that [INSERT CHILD'S NAME]'s ADHD is resulting in decreased alertness in the classroom and may be significantly impacting (his/her) school performance, learning, and behavior.

I would like to meet with all those 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]
[INSERT YOUR ADDRESS]
[INSERT YOUR TELEPHONE NUMBER AND EMAIL ADDRESS]

Find your local CHADD Chapter

CHADD
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For further information, please contact
National Resource Center on ADHD:
A Program of CHADD
4221 Forbes Blvd, Suite 270,
Lanham, MD 20706-4832
1-800-200-8098
301-306-7070
www.chadd.org/nrc

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