



## **Educational Rights for Children with AD/HD - CHADD Fact Sheet #4**

Two federal laws — the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act of 1973 (Section 504), guarantee children with attention-deficit/hyperactivity disorder (AD/HD) a free and appropriate public education (FAPE). Both laws also require that children with disabilities be educated to the maximum extent appropriate with children who do not have disabilities. Because there are different criteria for eligibility, different services available, different procedures for implementing the laws, and different procedural safeguards, it is important for parents, educators, clinicians and advocates to be well aware of the variations between these laws and to be fully informed about their respective advantages and disadvantages.

Perhaps the most substantial difference between these two laws is that eligibility for IDEA mandates that a child have a disability requiring special education services, while eligibility for Section 504 may occur when the child needs special education OR related services. Because of this distinction, children covered under Section 504 include those who typically either have less severe disabilities than those covered under IDEA, or have disabilities that do not neatly fit within the categories of eligibility under IDEA.

### **History**

Historically, many children with AD/HD have lacked access to IDEA and 504 legal protection because schools either did not know enough about AD/HD to consider it a disability, or misunderstood the nature of AD/HD and treated it as some other disability with little relevance to the actual needs of the child. Parents and teachers who sought special education and related services for children with AD/HD were often told that these children did not qualify for such services unless they met eligibility criteria developed for other disabilities, such as specific learning disability or serious emotional disturbance, without regard to the needs created by their AD/HD.

Despite these two laws, there remained a lack of meaningful education for many children with AD/HD. In 1990, Congress ordered a U.S. Department of Education “Notice of

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Inquiry” to solicit public comments about how schools throughout the country were serving children with AD/HD. The department received more than 2000 written comments. In response to such comments and the urging of CHADD and other organizations, the department issued a “Policy Clarification Memorandum” on September 16, 1991. This memorandum made clear that children with AD/HD may qualify for special education and related services solely on the basis of their AD/HD when it significantly impairs educational performance or learning. The memorandum recognized children with AD/HD as potentially eligible for both IDEA and Section 504 services when the AD/HD causes such impairment. On March 11, 1999, AD/HD was formally listed in the IDEA Regulations under the category “Other Health Impairment (OHI).” The AD/HD must result in limited alertness to academic tasks, due to heightened alertness to environmental stimuli; must be chronic (long-lasting) or acute (have a substantial impact); this must result in an adverse effect on educational performance; and the student must require special education services in order to address the AD/HD and its impact. An adverse effect on educational performance can incorporate all aspects of the child’s functioning at school, including educational performance as measured by grades or achievement test scores. It can also be manifested through behavioral difficulties at school; and impaired or inappropriate social relations; impaired work skills, such as being disorganized, tardy, having trouble getting to work on time and difficulty with following the rules. Schools are required to address the effects of a child’s disability in all areas of functioning, including academic, social/emotional, cognitive, communication, vocational and independent living skills.

The addition of AD/HD within the OHI category represents a huge step forward in achieving recognition from the schools. Schools will no longer be able to argue that AD/HD is not a covered condition. In their planning, they will now be required to address AD/HD systemically and systematically, rather than in a reactive manner or by deflection. Any child who qualifies for IDEA is automatically covered by Section 504, however the opposite is not true. It should be noted that these federal laws override state laws.

## **IDEA**

### **Who’s Eligible?**

IDEA is the law that governs all special education services in the United States. IDEA provides federal funding to school districts to support special education and related services. Thus, a need for special education is a requirement of IDEA. IDEA provides special education for those children who meet the eligibility criteria for one of a number of categories. If the child meets the criteria listed under one of these categories, the disabling condition adversely affects educational performance, and he requires special education, the child may be eligible to receive services under this law.

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AD/HD is listed under the IDEA category "Other Health Impairment." To receive services, the child must have a diagnosis of AD/HD that results in limited alertness to academic tasks, due to heightened alertness to environmental stimuli; must be chronic (long-lasting) or acute (have a substantial impact); this must result in an adverse effect on educational performance; and the student must require special education services in order to address the AD/HD and its impact.

## **Evaluation**

A multidisciplinary evaluation procedure is required to determine if a child is eligible for special education under IDEA and requires that the child who is eligible be considered for full or partial reevaluation at least every three years. The evaluation team must also consider whether the child requires assistive technology devices or services.

IDEA requires that the school district consider the findings of outside evaluators and, under some circumstances, pay for independent evaluations. Parental consent is required before any evaluation begins.

A parent's suspicion that a child has AD/HD is not sufficient to require a school system evaluation under the IDEA — an adverse effect on educational performance must also be reflected in the child's school work or school behavior. If an evaluation is warranted, it must be provided at no cost to the parents. This includes any medical component of the evaluation; parents are not financially responsible for the evaluation. If they have health insurance, the school must ensure that there is no out-of-pocket expense, nor impact on caps and premiums.

## **Section 504**

### **Who's Eligible?**

Section 504 is a civil rights statute requiring that schools not discriminate against children with disabilities and that they provide children with reasonable accommodations. Under some circumstances, these reasonable accommodations may include the provision of services.

Eligibility for Section 504 is based on the existence of an identified physical or mental condition that substantially limits a major life activity. As learning is considered a major life activity, children diagnosed with AD/HD are entitled to the protections of Section 504 if the disability is substantially limiting their ability to learn. Children who are not

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eligible for special education may still be guaranteed access to related services if they meet the Section 504 eligibility criteria.

## **Evaluation**

Although Section 504 requires testing and requires that testing be non-discriminatory, there are far fewer regulations placed on the testing procedure than are found with IDEA. In addition, unlike IDEA, Section 504 does not discuss the frequency of testing, the role outside evaluations may play, and does not require parental consent for testing. It does require that an evaluation be conducted before a child receives a 504 plan and before any changes are made to the plan.

## **IDEA**

### **What Does it Provide?**

Under IDEA, once a child with AD/HD is determined to be eligible for special education, the child is entitled to have an individualized education plan (IEP) that includes annual goals and short-term objectives, and is developed with the participation of the parents. Once the IEP is completed, parents or the school can request changes to it, but no changes can be made without the parents being informed and having an opportunity to request an impartial due process hearing to challenge the decision. The IEP will be reviewed at least annually, but may be reviewed as often as needed with any needed changes made. Parents are members of their child's eligibility, IEP and placement teams.

IDEA provides procedural safeguards that Section 504 does not. It specifies that a child must be educated in the class that he would be in if that child did not have a disability, and as close to home as possible, unless the IEP requires otherwise. All states and local education agencies must make a mediation process available to resolve disputes about a child's special education.

For children with more severe behavioral problems that lead to suspension and expulsion, IDEA also has two important provisions. Even when suspended or expelled, children covered by IDEA are still entitled to education services that meet the standards of a free appropriate education. Parents can request an impartial due process hearing when they disagree with the school's decision in such matters. Under a separate provision, the child can remain in the then-current educational placement until all administrative proceedings are concluded (with the exception of cases where the child has brought a weapon or drugs to school, or is proven to be substantially likely to harm himself or others).

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## Section 504

### What Does it Provide?

If the child is eligible under Section 504, the school district must develop a Section 504 plan. However, the regulations do not dictate the frequency of review of the 504 plan, and do not specify the right of parents to participate in its development.

Several examples of classroom adaptations for children with AD/HD include:

1. Tailoring homework assignments
2. Providing a structured learning environment
3. Simplifying instructions about assignments
4. Supplementing verbal instructions with visual instructions
5. Using behavioral management techniques
6. Modifying test delivery
7. Using tape recorders
8. Computer-aided instructions
9. Providing nursing services to supervise administration of medication
10. Providing counseling or other forms of therapy

### Which One is Right for My Child?

In general, Section 504 provides a faster, more flexible and less stigmatizing procedure for obtaining some accommodations and services for children with disabilities. By virtue of the looser eligibility criteria, some children may receive protection who are not eligible for services or protection under IDEA, and less information is needed to obtain eligibility. Thus, Section 504 can provide an efficient way to obtain limited assistance without the stigma and bureaucratic procedures attached to IDEA.

On the other hand, IDEA offers a wider range of service options, the procedures for parent participation and procedural safeguards are far more extensive, and the degree of regulation is far more specific than that found in Section 504.

If a child has behavioral challenges that could lead to the possibility of excessive discipline, suspension and expulsion, parents should be particularly aware of the less rigorous safeguards provided by Section 504. Although parents can file a request for an impartial due process hearing under Section 504, there is no "stay-put" provision keeping the child in his current placement until the matter is resolved. It is important to realize that because Section 504 provides a school district with greater administrative latitude and less accountability than does IDEA, many school districts will push for the child to be served under Section 504.

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## Ensuring Services for Children with AD/HD

Despite the protection guaranteed by the IDEA and Section 504, many children with AD/HD continue to be denied access to an appropriate range of special education and/or related services. Myths and ignorance about AD/HD continue, even though scientific research has documented AD/HD as a neurological disability.

CHADD has several recommendations for any parent who suspects that a child's educational performance is being adversely affected by AD/HD:

1. Meet with your child's teacher to share your concerns. Teachers often have similar concerns and welcome the opportunity to discuss these with parents.
2. Seek written documentation from the teachers describing their behavioral or academic concerns. Where possible, obtain appropriate behavior rating scales from a clinical or school psychologist or physician for the school staff to complete.
3. You may request an evaluation of your child at any time. All requests for evaluations and services should be made in writing, dated and a copy of such requests kept. An example of such a letter is found below.
4. Parents should play an active role in preparing the IEP or Section 504 plan. This plan is a legal document that the school must follow. Keep careful records. This should include a record of observations reported by your child's teachers and any relevant communications between home and school. All letters sent to the school should be copied and filed. Many parents use a three-ring binder to keep all relevant records and documents. This information will prove very useful if you and the school disagree about services for your child.
5. Keep in mind that the findings of the evaluation team are not final. You have the right to appeal the conclusions. The school is required to provide you with information about appeal procedures.
6. Parents and their children are guaranteed rights under federal and state laws. The process for ensuring these rights, however, can be confusing and intimidating. Check with your child's school or local CHADD chapters about a parent advocate service in your community. It may also be necessary to retain an attorney if you decide to appeal a school's decision because it is very likely that the school district will have its own legal counsel in such an appeal. A parent advocate service may be able to help locate a qualified attorney if one is needed.
7. Whenever possible, try to work things out with the school in a mutually acceptable manner. If disputes arise, consider using mediation in addition to or in place of a due process hearing.

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Dear Principal: Date: \_\_\_\_\_

I am the parent of \_\_\_\_\_, whose date of birth is \_\_\_\_\_ and who is a student in the \_\_\_\_\_ grade at school. \_\_\_\_\_ was recently diagnosed with attention-deficit/hyperactivity disorder. Since \_\_\_\_\_ entered school, teachers have been raising concerns about (his)(her) academic performance and behavior. My child is not doing well in school and may need special education services. I am therefore requesting a multidisciplinary team evaluation to determine if \_\_\_\_\_ is eligible for special education and/or related services under both the IDEA (including the IDEA "Other Health Impairment" category) and Section 504, in accordance with the IDEA regulations 34 CFR 300.7, plus the public education regulations of this state.

I look forward to hearing from you and to working with you and your staff to ensure a successful educational experience for \_\_\_\_\_.

Sincerely,

Name

Address

Phone

*This article, 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. This article first appeared as CHADD Fact Sheet No.4, Spring 2000.*

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