

Students with ADHD and Section 504: A Resource Guide



U.S. Department of Education
Office for Civil Rights
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U.S. Department of Education
Office for Civil Rights
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The Department is issuing this guide and the accompanying letter to provide State and local educational agencies, including charter schools, with information to assist them in meeting their obligations under Federal civil rights laws, including Section 504 of the Rehabilitation Act of 1973, and implementing regulations that it enforces. 29 U.S.C. § 794; 34 C.F.R. Part 104. This Resource Guide and letter also provides members of the public with information about their rights under the law and regulations.

If you are interested in commenting on this guide or letter, or have questions, please send them to OCR by email at OCR@ed.gov, by phone at 800-421-3481 (TDD 800-877-8339), or by mail to the Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202. For further information about the Department's guidance processes, please visit www.ed.gov/policy/gen/guid/significant-guidance.html.

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A. Federal Disability Laws

The U.S. Department of Education’s (Department’s) Office for Civil Rights (OCR) enforces Federal laws protecting the rights of students facing discrimination on the bases of race, color, national origin, sex, age, and disability.

OCR has enforcement responsibilities to resolve complaints and conduct compliance reviews involving disability discrimination under two Federal anti-discrimination laws: (1) Section 504 of the Rehabilitation Act of 1973 (Section 504);¹ and (2) Title II of the Americans with Disabilities Act of 1990 (Title II).²

The Individuals with Disabilities Education Act (IDEA) requires States and school districts to ensure that eligible students with disabilities receive appropriate special education and related services at no cost to the parents,³ which is referred to as a free appropriate public education (FAPE) under the IDEA.⁴ These students may include those with attention-deficit/hyperactivity disorder (ADHD).⁵ OCR does not administer or enforce the IDEA. The Office of Special Education Programs (OSEP) in the Department’s Office of Special Education and Rehabilitative Services (OSERS) administers the IDEA. For information about the IDEA, please see <http://idea.ed.gov> and <http://www.ed.gov/osers/osep/index.html>. While the IDEA is the primary vehicle for identifying, evaluating, and educating students with disabilities who need special education and related services, the focus of this document is on the civil rights requirements of Section 504 as set out in the Department’s Section 504 implementing regulations at 34 C.F.R. Part 104.

Below are summaries of these three laws.

¹ 29 U.S.C. § 794, and its implementing regulation, at 34 C.F.R. Part 104.

² 42 U.S.C. §§ 12131-12134, and its implementing regulation at 28 C.F.R. part 35. For general information about the ADA, please see <https://www.ada.gov/>.

³ In this document, “parent” also includes “guardian” or “guardians.”

⁴ 20 U.S.C. §§ 1400-1482. The statutory authority for Part B of the IDEA is 20 U.S.C. §§ 1401, 1411-1419, and its implementing regulations are at 34 C.F.R. part 300. FAPE is a statutory term defined in Part B of IDEA in 20 U.S.C. § 1401(9) and the Department’s regulation in 34 C.F.R. § 300.17. The Department’s Section 504 implementing regulation also uses the phrase “free appropriate public education,” as discussed below under the heading “Section 504 of the Rehabilitation Act.”

⁵ ADHD includes: predominantly inattentive type, predominantly hyperactive-impulsive type, and combined type (where symptoms of the first two types are equally present) Centers for Disease Control and Prevention (CDC), *Attention-Deficit/Hyperactivity Disorder (ADHD), Facts About ADHD*, (updated April 2016) (“CDC Facts About ADHD”), <http://www.cdc.gov/ncbddd/adhd/facts.html>.

Section 504 of the Rehabilitation Act⁶

Section 504 prohibits discrimination on the basis of disability in programs or activities receiving Federal financial assistance, including school districts.⁷ (In this document, “school district” and “public elementary and secondary school systems” are used synonymously and include all local educational agencies (LEAs) and charter schools.)⁸

The definition of disability is the same under both Title II and Section 504. Under these laws, a person (including a student) with a disability is one who meets any of the following criteria:

- has a physical or mental impairment that substantially limits one or more major life activities;
- has a record of such an impairment; or
- is regarded as having such an impairment.⁹

Some examples of a major life activity that could be substantially limited by ADHD include concentrating, reading, thinking, and functions of the brain.¹⁰

⁶ For further discussion of these laws, please visit OCR’s website, at <http://www.ed.gov/policy/rights/guid/ocr/disability.html>.

⁷ Title II prohibits discrimination on the basis of disability by public entities, including public elementary and secondary school systems, regardless of receipt of Federal financial assistance. In the education context, OCR shares enforcement responsibility for Title II with the U.S. Department of Justice. 28 C.F.R. § 35.190(b)(2). Although this document primarily addresses Section 504 obligations, violations of Section 504 that result from a school district’s failure to meet the obligations identified in this letter also constitute violations of Title II. 42 U.S.C. § 12201(a). To the extent that Title II provides greater protection than Section 504, covered entities must comply with Title II’s requirements, see, e.g., *Guidance on Effective Communication for Students with Hearing, Vision, or Speech Disabilities in Public Elementary and Secondary Schools* (Nov. 12, 2014), <http://www.ed.gov/about/offices/list/ocr/letters/colleague-effective-communication-201411.pdf>. A discussion of any such additional requirements is beyond the scope of this guidance.

The requirements of Section 504 regarding the provision of FAPE also apply to any juvenile justice facility that receives federal financial assistance from the Department of Education, and the requirements of Title II apply to any juvenile justice facility that is a program or activity of a state or local government. See OCR and Department of Justice Civil Rights Division, *Dear Colleague Letter: Civil Rights in Juvenile Justice Residential Facilities* (Dec. 8, 2014), <http://www.ed.gov/policy/gen/guid/correctional-education/cr-letter.pdf>. For more information on Title II, please visit <https://www.ada.gov/>.

⁸ Charter schools are subject to the same Federal civil rights obligations as all other public schools. “Charter schools” includes schools that are public schools of a school district as well as charter schools that operate as LEAs under State law. For additional information about the applicability of Federal civil rights laws to charter schools, see OCR, *Dear Colleague Letter: Charter Schools* (May 14, 2014), <http://www.ed.gov/ocr/letters/colleague-201405-charter.pdf>.

⁹ 29 U.S.C. § 705(20)(B); 34 C.F.R. § 104.3(j). Those who are eligible for coverage under the “regarded as” prong of the disability definition are not entitled to FAPE under Section 504 (because they do not actually have a substantially limiting impairment), cf. 42 U.S.C. § 12201(h), but they are still protected by Section 504’s general nondiscrimination provisions, including protection from disability-based harassment, and retaliation..

¹⁰ 42 U.S.C. § 12102.

It is important to remember that an impairment that substantially limits any major life activity, not just a major life activity related to learning or school, would be considered a disability under Section 504.

Section 504 provides a broad spectrum of protections against discrimination on the basis of disability, including one key aspect on which this guidance focuses: the right to a free, appropriate public education (FAPE). All elementary and secondary school students who are individuals with disabilities as defined by Section 504 and need FAPE are entitled to FAPE.

Under Section 504, FAPE is the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and that satisfy certain procedural requirements related to educational setting, evaluation and placement, and procedural safeguards.¹¹

(See pages 9 and 30 for further discussion of evaluation and placement, and procedural safeguards.)

An individualized education program (IEP) developed and implemented in accordance with the IDEA is one means of meeting the Section 504 FAPE standard.¹²

¹¹ 34 C.F.R. § 104.33.

¹² 34 C.F.R. § 104.33(b)(2). As used in the IDEA Part B regulations in 34 C.F.R. part 300, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with 34 C.F.R. §§ 300.320 through 300.324, and that must include: a statement of the child's present levels of academic achievement and functional performance; a statement of measurable annual goals, including academic and functional goals; for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives; a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided; a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 612(a)(16) of the IDEA; and if the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or districtwide assessment of student achievement, a statement of why the child cannot participate in the regular assessment and why the particular alternate assessment selected is appropriate for the child. 34 C.F.R. § 300.320(a); 20 U.S.C. § 1414(d)(1)(A)(i). *See* <http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CTopicalBrief%2C10%2C>.

Section 504 also requires that a student with a disability be educated with students without disabilities to the maximum extent appropriate to the needs of the student with the disability and that a student with a disability be educated in the regular education setting unless the district can demonstrate that the education of that student in the regular educational environment with the use of supplementary aids and services cannot be achieved satisfactorily.¹³

Though not explicitly required by the Department’s Section 504 regulations, school districts often document the elements of an individual student’s FAPE under Section 504 in a document, typically referred to as a “Section 504 Plan.” While there is no specific Section 504 requirement for such a plan or what the plan should contain, a Section 504 Plan often includes the regular or special education and related aids and services a student needs, and the appropriate setting in which the student should receive those services, also called the student’s “placement.” A written plan is often a useful way to document that the school district engaged in a process to identify and address the needs of a student with disabilities and to communicate, to school personnel, the information needed for successful implementation. A Section 504 Plan for a student with ADHD, for example, could include behavioral interventions, assistance with organization, and additional time to complete assignments or tests.

If a student has a written Section 504 Plan, it is vital that teachers and appropriate staff have access to it so that the plan is implemented consistently. In OCR’s experience, the failure to ensure appropriate access to that plan or otherwise inform staff of their specific responsibilities under Section 504 for a particular student often results in a failure to provide FAPE and equal educational opportunity.

Section 504 also requires that any placement decisions about a student with a disability be made by a group that includes persons knowledgeable about the student, the meaning of the evaluation data, and placement options, and this group is often referred to as a “Section 504 team.”¹⁴ It is helpful if that group includes a school district or agency representative who can ensure the district provides, or is able to provide, all services that are identified as necessary. The absence of such a representative on the Section 504 team could result in a denial of FAPE if the Section 504 team determines certain services are necessary and the district is unable to provide them. Such a determination would depend on the particular facts and circumstances.

¹³ 34 C.F.R. § 104.34.

¹⁴ 34 C.F.R. § 104.35(c)(3). Parents could be an important source of information to the school district about what techniques, interventions, services and supports would be most effective in meeting that student’s needs.

The Americans with Disabilities Act Amendments Act

In the Americans with Disabilities Act Amendments Act of 2008 (Amendments Act), which amended both the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973, Congress directed that the definition of disability be construed broadly and that the determination of whether an individual has a disability not demand extensive analysis.¹⁵ (The Amendments Act did not alter or affect the administration of the IDEA.)

The Amendments Act materially broadened the interpretation of the terms that define disability in two ways of particular significance for students with ADHD.¹⁶ First, it expanded the list of examples of major life activities by adding, among other things, concentrating, reading, thinking, and functions of the brain.¹⁷

Second, the Amendments Act stated that mitigating measures shall not be considered in determining whether an individual has a disability. Mitigating measures include, for example, medications, coping strategies, and adaptive neurological modifications that an individual could use to eliminate or reduce the effects of an impairment.¹⁸

School districts cannot consider the ameliorative effects of mitigating measures when determining how the impairment impacts the major life activities under consideration.¹⁹ The impact, therefore, of a student's ADHD on a given major life activity, such as concentrating or thinking, must be considered in the student's unmitigated state to determine whether a substantial limitation exists. For example, if a student requires medication to address an impairment, the ameliorative effects of the medication cannot be considered when evaluating the student for a disability.²⁰ (See page 9 for further discussion of the evaluation process.)

¹⁵ ADA Amendments Act of 2008, Pub. L. No. 110-325, § 2, 122 Stat. 3554 (2008).

¹⁶ For a more detailed discussion of the Amendments Act and its effects upon the disability laws OCR enforces, please see OCR, *Dear Colleague Letter* (Jan. 19, 2012), <http://www.ed.gov/ocr/letters/colleague-201109.html>. See also OCR, *Questions and Answers on the ADA Amendments Act of 2008 for Students with Disabilities Attending Public Elementary and Secondary Schools* (Jan. 19, 2012), <http://www.ed.gov/ocr/docs/dcl-504faq-201109.html>.

¹⁷ 42 U.S.C. § 12102(2).

¹⁸ Amendments Act § 4(a) (codified as amended at 42 U.S.C. § 12102) (“The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as— (I) medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies; (II) use of assistive technology; (III) reasonable accommodations or auxiliary aids or services; or (IV) learned behavioral or adaptive neurological modifications.”).

¹⁹ *Id.*

²⁰ Section 504 does not require that a student stop taking needed medication in order to receive an evaluation for disability and need for special education or related services.

Individuals with Disabilities Education Act

Part B of the IDEA²¹ provides Federal funds to State educational agencies, and through them to eligible LEAs, to assist in providing special education and related services to eligible students with disabilities.²²

States receiving IDEA funds must ensure that school districts locate, identify, and evaluate students who are suspected of having disabilities as defined by the IDEA and who need special education and related services.²³

Each eligible student must have an IEP, developed by an IEP Team that includes school officials and the student's parents, and whenever appropriate, the student. An IEP must include, among other things, a statement of annual goals, including academic and functional goals, and the special education and related services, and supplementary aids and services that the school district will provide to the student, and the program modifications or supports for school personnel, to enable the student to advance appropriately toward attaining his or her annual IEP goals and to be involved, and make progress in the general education curriculum, and to participate in extracurricular and other nonacademic activities.²⁴

Implementation of an IEP, developed in accordance with the IDEA, is one means of meeting the FAPE standard under Section 504.²⁵

²¹ 20 U.S.C. §§ 1401, 1411-1419; 34 C.F.R. part 300. The IDEA does not restrict or limit the rights, procedures, and remedies available under the U.S. Constitution, the ADA, Section 504, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under those laws seeking relief that is also available under the IDEA, IDEA's administrative due process procedures in subsections (f) and (g) of 20 U.S.C. § 1415 must be exhausted to the same extent as would be required had the action been brought under IDEA. 20 U.S.C. § 1415(l).

²² Under the IDEA, a child must be evaluated, subject to parental consent, in accordance with 34 C.F.R. §§ 300.304 through 300.311 and found to have a disability and to need special education and related services because of that disability. The IDEA includes 13 disability categories: autism, deaf-blindness, deafness, emotional disturbance, hearing impairment, intellectual disability, multiple disabilities, orthopedic impairment, other health impairment, specific learning disability, speech or language impairment, traumatic brain injury, and visual impairment including blindness. 20 U.S.C. § 1401(3) and 34 C.F.R. § 300.8. Although a child's need for special education is a critical part of IDEA's definition of "child with a disability" and thus a child's entitlement to FAPE under IDEA, a child who has an impairment listed in the IDEA can be considered a child with a disability if the child needs a related service that consists of specially designed instruction that is considered special education rather than a related service under State standards. 34 C.F.R. § 300.8(a)(2)(ii).

²³ 34 C.F.R. § 300.111.

²⁴ 34 C.F.R. § 300.320(a).

²⁵ 34 C.F.R. § 104.33(b)(2).

School districts also must ensure that FAPE, under the IDEA, is provided to all eligible students with disabilities in the least restrictive environment (LRE). LRE means that, to the maximum extent appropriate, students with disabilities are educated with students without disabilities, and removal of students with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a student is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.²⁶

In general, students with ADHD may be eligible for special education and related services under the IDEA if, following an evaluation that meets the requirements set forth in the IDEA regulations, they meet the criteria applicable to one or more specific disability categories, and if they need special education and related services because of their disability. (As noted in footnote 22, a student can still be determined to be a child with a disability under IDEA if the student needs only a related service, if it consists of specially designed instruction and is considered special education, rather than a related service, under applicable State standards.)

Under the IDEA Part B regulations, a student may be eligible under the category *other health impairment* if the student has limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment due to a chronic or acute health problem that adversely affects the student's educational performance. IDEA's regulatory definition of "other health impairment" was specifically amended in 1999 to include ADHD as an example of a chronic or acute health problem that could be found to adversely affect a child's educational performance.²⁷

Eligibility under the IDEA for a student with ADHD is not limited, however, to the *other health impairment* category. For example, students with ADHD can be eligible for services under the *specific learning disability* or *emotional disturbance* categories if they meet the criteria applicable to those categories set forth in the IDEA regulations.²⁸

²⁶ 34 C.F.R. §§ 300.114-117.

²⁷ 34 C.F.R. § 300.8(c)(9).

²⁸ 34 C.F.R. §§ 300.8(c)(4), (10). See also U.S. Department of Education, Office of Special Education and Rehabilitative Services, Office of Special Education Programs, *Identifying and Treating Attention Deficit Hyperactivity Disorder: A Resource for School and Home*, Washington, D.C., (Aug. 2008) ("OSEP ADHD Resource"), 5, <http://www2.ed.gov/rschstat/research/pubs/adhd/adhd-identifying.html>.

Finding a student with ADHD ineligible for special education under the IDEA, however, does not relieve the school district of its obligation to evaluate the student, as appropriate, under Section 504.

If a student is evaluated for the provision of services under the IDEA and is found ineligible because he or she does not need special education and related services because of the disability, the school district must still consider if the student could be covered by Section 504.

This means the school district must determine whether or not the student has a disability for which he or she still might need regular education and related aids and services in order to receive FAPE under Section 504.²⁹ This determination could require an evaluation under Section 504.³⁰

The remainder of this Resource Guide discusses how schools must identify, evaluate, make placement determinations about students with ADHD, and otherwise ensure nondiscrimination under Section 504.

²⁹ 34 C.F.R. §§ 104.33(b), 104.35.

³⁰ In some circumstances, the IDEA evaluation process may provide the school district with the necessary information, required by Section 504, to determine whether or not a student has a disability, and whether that student needs related aids and services or supplementary aids and services in the regular education environment because of that disability.

B. The Obligation to Identify, Evaluate, and Make Placement Determinations about Disability and Needed Services under Section 504

When Must a School District Conduct an Evaluation?

Under Section 504, a school district must identify, locate, and conduct a free evaluation of any student who because of a disability “needs or is believed to need” special education or related services.³¹ This obligation may be more commonly known as “Child Find.”³² A school district must conduct an individual evaluation:

- before taking any action with respect to the student’s initial placement; and
- before making any subsequent significant change in placement.

Here, and as used elsewhere in this document, placement means whatever regular or special education, related aids and services, or supplementary aids and services the student needs and the appropriate setting in which the student is to receive those services.³³

³¹ 34 C.F.R. §§ 104.32, 104.35(a).

³² “Child find” is a concept derived from the IDEA. 20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111.

³³ 34 C.F.R. § 104.35(c)(4) (requiring that the placement decision is made in conformity with § 104.34, concerning educational setting).

According to the Centers for Disease Control and Prevention (CDC), there are three different types of ADHD, which are categorized depending on which symptoms are strongest.³⁴

- (1) **predominantly inattentive type;**
- (2) **predominantly hyperactive-impulsive type;** and
- (3) **combined type** (where symptoms of the first two types are equally present).³⁵

Every type of ADHD affects the functioning of the parts of the brain related to thinking, concentrating, and planning. A determination that a student has any type of ADHD, therefore, is a determination that a student has an impairment for purposes of meeting one of the prongs of Section 504's definition of disability.³⁶

Further, a diagnosis of ADHD is evidence that a student may have a disability.³⁷ OCR will presume, unless there is evidence to the contrary, that a student with a diagnosis of ADHD is substantially limited in one or more major life activities.³⁸

If district staff perceive or receive information to lead them to suspect that a student has a disability – for example, that a student has ADHD and needs or is believed to need special education or related aids and services in addition to regular education³⁹ – the school district must evaluate to determine if the impairment substantially limits that student in a major life activity.⁴⁰

In the context of students with ADHD, it is important that school districts consider conducting an evaluation when students demonstrate to teachers or parents signs of needing special education or related aids and services to meet their individual educational needs as adequately as the needs of their nondisabled peers are met.

³⁴ CDC Facts About ADHD.

³⁵ *Id.*

³⁶ *Id.*

³⁷ “Diagnosis of ADHD requires a comprehensive evaluation by a licensed clinician, such as a pediatrician, psychologist, or psychiatrist with expertise in ADHD.” National Institutes of Mental Health (NIMH publication), Attention Deficit Hyperactivity Disorder (Revised Mar. 2016), http://www.nimh.nih.gov/health/topics/attention-deficit-hyperactivity-disorder-adhd/index.shtml#part_145448. For more information, see discussion on Medical Assessments, at page 23 of this Resource Guide.

³⁸ As noted above, since the enactment of the Amendments Act, the question of whether an individual's impairment is a disability should not demand extensive analysis as the law requires broad coverage.

³⁹ For further discussion of factors that may indicate a student needs special education or related aids and services, please see footnote 41 and the associated text.

⁴⁰ 34 C.F.R. § 104.35.

Such signs may be:

- considerable restlessness or inattention inappropriate for their age and grade level;
- trouble organizing tasks and activities; or
- communication or social skill deficits.⁴¹

No particular combination of the above is necessary for an evaluation to be required. For example, a school district must evaluate a student if it believes the student has a disability and believes the student needs special education or related services as a result of that disability, even if the student only exhibits behavioral (and not academic) challenges.

For example, those students who have a high number of discipline referrals, as compared to their peers, for incidents such as disruptions in class, could also be students with a disability in need of services.

Some students, due to their unaddressed disability-related needs, may engage in behaviors that do not conform to school codes of conduct.

These and other indications that the student's behavior is out of the expected range of behaviors of students that age could trigger a school district's obligation to evaluate under Section 504.

School districts should also consider conducting evaluations when students demonstrate significant difficulty related to beginning a task, organizing and recalling information, and completing assignments such as homework and multi-step class projects.

An evaluation can also identify other coexisting disorders, such as depression or anxiety, which may be related to the ADHD and impact the kinds of services a student needs.⁴² Some disorders may be hidden by the symptoms of ADHD, or vice versa.

⁴¹ A student with ADHD might also exhibit the following behaviors, to a greater extent than expected for his or her age and grade level: excessive daydreaming; distracting oneself by socializing to the degree that doing so prevents, or significantly interferes with, completing work; inability to stay still or stay in a seat; recurring difficulties in organizing, or inability to follow through on instructions and failing to finish schoolwork; repeatedly missing details or having difficulty processing information as quickly or accurately as expected for his or her age and grade level; repeatedly losing things; routinely interrupting conversations or other activities. See CDC Facts About ADHD, <http://www.cdc.gov/ncbddd/adhd/facts.html>.

⁴² Research estimates that students with ADHD have coexisting psychiatric disorders at a much higher rate than students without ADHD. U.S. Department of Education, *Teaching Children with Attention Deficit Hyperactivity Disorder: Instructional Strategies and Practices* (Feb. 2004), www.ed.gov/teachers/needs/speced/adhd/adhd-resource-pt2.doc.

A school district, therefore, must evaluate students who are suspected of having a disability in all related or all specific areas of educational need.⁴³ For example, a student who is easily distracted and unfocused may very well be manifesting an unaddressed ADHD that indicates the need for behavioral and executive function supports to improve focus and organizational skills, such as support in organizing a task, getting started, and remaining engaged in a task. But a student could also present with ADHD and depression, which would indicate additional or different needs. Under these circumstances, an evaluation is the best means for a district to make an informed determination of the student’s individual educational needs.

Someone with ADHD may achieve a high level of academic success but may nevertheless be substantially limited in a major life activity due to his or her impairment because of the additional time or effort he or she must spend to read, write, or learn compared to others.⁴⁴ In OCR’s investigative experience, school districts sometimes rely on a student’s average, or better-than-average, grade point average (GPA) and make inappropriate decisions.

For example, a school district might erroneously assume that a student with an above-average GPA does not have a disability, or has no unaddressed needs related to the disability, and therefore fail to conduct a Section 504 evaluation of that student, even if that student is suspected of having or has been diagnosed with ADHD and receives family provided academic supports outside of school.

In passing the Amendments Act, some Members of Congress emphasized that “it is critical to reject the assumption that an individual who has performed well academically cannot be substantially limited in activities such as learning, reading, writing, thinking, or speaking.”⁴⁵

Thus, for example, when making the determination as to whether to evaluate a student suspected of having a disability under Section 504 because of ADHD, or in conducting such an evaluation, school districts should ask how difficult it is or how much time it takes for a student with ADHD, in comparison to a student without ADHD, to plan, begin, complete, and turn in an essay, term paper, homework assignment, or exam.

⁴³ Under Section 504, an evaluation must: consist of more than mere intelligence quotient (IQ) tests; and measure specific areas of educational need, such as speech processing issues, inability to concentrate, and behavioral concerns. Also, as part of the evaluation, Section 504 requires that tests are selected and administered to the student in a manner that best ensures that the test results accurately reflect the student’s aptitude or achievement or other factor being measured, rather than reflect the student’s disability, except where those are the factors being measured; that tests and other evaluation materials are validated for the specific purpose for which they are used; and that tests are appropriately administered by trained personnel. 34 C.F.R. § 104.35(b)(2)-(3).

⁴⁴ Cf. 29 C.F.R. part 1630, App. “Interpretive Guidance on Title I of the Americans With Disabilities Act” (Mar. 25, 2011) (“Equal Employment Opportunity Commission (EEOC) Interpretive Guidance”).

⁴⁵ 154 Cong. Rec. S8342, 8346 (daily ed. Sept. 11, 2008) (statement of the Managers to Accompany S. 3406, The Americans with Disabilities Act Amendments Act of 2008).

The failure to evaluate under Section 504 may be particularly acute for students with the inattentive-type ADHD; such students are less likely to come to the attention of school district personnel because they are less likely to engage in impulsive or disruptive behavior.⁴⁶ Nonetheless, their substantial functional limitations, including those pertaining to starting a task or organizing and recalling information, can present them with overwhelming challenges to learning.

School districts that are reluctant to evaluate students who exhibit behaviors consistent with inattentive-type ADHD could be doing a disservice to teachers who feel frustration about not being able to reach a generally quiet and cooperative student. These school districts could also be doing a disservice to families who are making extraordinary efforts to compensate for what is not learned in school by assisting the student and struggling nightly over homework and other assignments.

The fact that these students do not show the same impulsivity or overactivity as some other students with or without ADHD does not in any way diminish the substantial limitations that may warrant a Section 504 individual evaluation to address specific areas of educational need and any need for special education or related aids and services. Similarly, the ability of a student to hyper-focus on a particular activity, such as a computer-based assignment, may not be sufficient to confirm that the student does not have ADHD and does not have needs associated with the disorder.

The development of neutral policies – meaning policies that do not mention race, color, national origin, or sex – that specify when a Section 504 evaluation is needed, and careful evaluations that aim for objectivity, may help a school district avoid operating on the basis of making generalizations, assumptions, prejudices, or stereotypes about disability generally, or ADHD in particular. Nondiscriminatory implementation of such policies and careful, objective evaluations also help to ensure that a school district is not impermissibly relying on sex-based or racial/ethnic stereotypes.⁴⁷

⁴⁶ Arcia, E., Frank, R., Sánchez-LaCay, A., Fernández, M.C., *Teacher Understanding of ADHD As Reflected in Attributions and Classroom Strategies*, 4 J. ATTENTION DISORDERS 91, 98 (2000).

⁴⁷ Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in educational programs and activities operated by recipients of Federal financial assistance. 20 U.S.C. §§ 1681-1688; 34 C.F.R. Part 106. Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color or national origin by recipients of Federal financial assistance. 42 U.S.C. §§ 2000d-2000d-7; 34 C.F.R. Part 100.

Parents can also request that the school district conduct an evaluation to determine if their child needs special education or related services because of ADHD.⁴⁸ For example, a parent might request an evaluation, if the student has received a diagnosis of ADHD outside of school, to ensure that the school is aware of the student's disorder and recognizes the ADHD as a disability under Section 504. Once the school district determines that a student has a disability under Section 504, and needs special education or related aids and services because of that disability, the school district must provide the needed instruction or services.

If a parent requests an evaluation to address a student's academic or behavioral difficulty that is the result of a suspected disability, then a district must either conduct an evaluation to determine whether the student has a disability and, because of the disability, needs special education or related services, or explain its refusal to evaluate the student to the requesting parent and notify parents of their right to dispute that decision through the due process procedures that must be made available under Section 504's implementing regulation.⁴⁹

If the school district suspects the student's needs have changed – if there is reason to believe the student's current set of regular or special education and related aids and services is not meeting his or her needs, the student's underlying disability or disabilities have changed, or the student has an additional disability – Section 504 requires that any needed changes be made promptly in order to ensure the continued provision of FAPE to that student. (The Section 504 regulations do not set a specific timeframe within which students with disabilities must be reevaluated to make sure that they are receiving the appropriate services. Section 504, however, requires reevaluations to be conducted periodically, and before a significant change in placement.)⁵⁰

⁴⁸ 34 C.F.R. Part 104, app. A (discussion of Subpart D) (enable parents or guardians to influence decisions regarding the evaluation and placement of their children.) OCR interprets Section 504 to require parental consent for the initial evaluation. OCR also urges schools to allow for parental participation when considering any change in the student's Section 504 provision of FAPE, including location of services. OCR, *Protecting Students With Disabilities: Frequently Asked Questions About Section 504 and the Education of Children with Disabilities*, Q&As 27, 41-43, <http://www2.ed.gov/ocr/504faq.html#evaluation>.

⁴⁹ 34 C.F.R. § 104.36. (See Section C for more information about due process requirements.)

⁵⁰ 34 C.F.R. §§ 104.33, 104.35.

Intervention Strategies Must Not Deny or Delay Evaluation of Students Suspected of Having a Disability

If a school district believes a student has a disability and because of the disability needs special education or related aids and services, then Section 504 requires the school district to conduct a preplacement evaluation of that student.⁵¹ School districts violate this Section 504 obligation when they deny or delay conducting an evaluation of a student when a disability, and the resulting need for special education or related services, is suspected.

As a first response to address the needs of any student experiencing challenges at school or in the classroom and prior to conducting an evaluation, many school districts choose to implement different intervention strategies, regardless of whether or not the student is suspected of having a disability. Interventions can be very effective and beneficial in addressing both academic and behavioral challenges. These intervention strategies can vary.

In OCR's experience, school districts have not generally adopted a uniform definition of what constitutes an intervention strategy, protocol, or process, and they have been described in a variety of ways, including, but not limited to: Response to Intervention (RTI);⁵² multi-tiered system of supports (MTSS); positive behavioral interventions and supports and other strategies; and referral to intervention teams.

The interventions could include informal classroom interventions, evidence-based screening and classroom interventions, such as multiple levels (tiers) of instruction that are progressively more intense, based on the student's response to instruction. Interventions could also be provided outside of the classroom or after school hours, such as after-school programs, tutoring, mentoring, or any other program a school district chooses to implement as a means to assist students.

⁵¹ 34 C.F.R. § 104.35(a).

⁵² RTI is referred to in the IDEA regulations at 34 C.F.R §§ 300.307, 300.309 and 300.311 (Procedures for Identifying Children with Specific Learning Disabilities). For further information about RTI, please see <http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C8%2C>.

The Department supports the use of an evidence-based⁵³ system of interventions to help a school district identify and address learning and behavioral challenges in its students at the earliest opportunity, improving student achievement and reducing behavioral problems whether or not they are related to a disability.⁵⁴

When a school district is considering employing a targeted or intensive intervention under the school district's intervention strategy for a particular student, it should ensure that any intervention used is designed to address the particular behavior, the obstacles to accomplishing schoolwork, or the underachievement in question.

For example, an intervention designed to address focus, such as seating a student in the front of the classroom, may be of little or no value in improving homework tardiness, or peer interactions during recess.

Implementing an intervention strategy and evaluating for a disability do not have to occur sequentially, but could be implemented at the same time, as parallel responses in an attempt to identify and address a student's needs. Interventions could be implemented while a student is being evaluated, and information gathered during the intervention protocol could be useful in the evaluation process.⁵⁵

If a student continues to experience academic or behavioral problems, even after the implementation of intervention strategies, this may indicate that the student has a disability (substantial limitation of a major life activity) and that because of the disability he or she needs special education or related aids and services. School districts are in a better position to comply with their Section 504 obligations if they consider this evidence within a reasonable period of time in determining whether a Section 504 evaluation could be necessary.

⁵³ The term "evidence-based" means an activity, strategy, or intervention that demonstrates a statistically significant effect on improving student outcomes or other relevant outcomes based on evidence; or demonstrates a rationale based on high-quality research findings or positive evaluation that such activity, strategy, or intervention is likely to improve student outcomes or other relevant outcomes; and includes ongoing efforts to examine the effects of such activity, strategy, or intervention. *See* Every Student Succeeds Act, Pub. L. No. 114-95, Section 8108(21) (2015).

⁵⁴ Memorandum from the Director of U.S. Department of Education's Office of Special Education Programs to State Directors of Special Education, *A Response to Intervention (RTI) Process Cannot Be Used to Delay-Deny an Evaluation for Eligibility under the Individuals with Disabilities Education Act (IDEA)* (Jan. 21, 2011), (OSEP Memorandum), <http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/osep11-07rtimemo.pdf>.

⁵⁵ The interventions also can be implemented as part of the school district's overall preplacement evaluation of the student, so long as the interventions yield data that satisfy the Section 504 regulation concerning evaluation materials, and do not delay the completion of the evaluation. 34 C.F.R. § 104.35(b). Once a student has been identified as having a disability, the school must then determine what, if any, regular or special education and related aids and services the student needs because of the disability. If the Section 504 team believes an intervention strategy would be effective in addressing the student's needs, then the district could consider including those interventions as part of the student's Section 504 Plan.

If the district suspects that a student has a disability and because of the disability needs special education or related aids and services, it would be a violation of Section 504 to delay the evaluation in order to first implement an intervention that is unrelated to the evaluation, or to determining the need for special education or related aids and services.⁵⁶

In OCR's experience, school districts run afoul of the Section 504 obligation to evaluate for disability and need for special education or related services when they:

- 1) rigidly insist on first implementing interventions before conducting an evaluation, or that each tier of a multi-tiered model of intervention must be implemented first, regardless of whether or not a disability is suspected and there are needs based on the disability; or
- 2) categorically require that data from an intervention strategy must be collected and incorporated as a necessary element of an evaluation.

It is important that school districts appropriately train their teachers and staff to identify academic and behavioral challenges that may be due to a disability so a student is referred for an evaluation under Section 504, if needed.

Once a school district believes a student has a disability and needs special education or related services because of that disability, it must evaluate the existence of a disability by considering whether the student is substantially limited in his or her unmitigated state. This means, for example, that the school district cannot consider the ameliorative effects of any mitigating measures, for instance the ameliorative effects of the school district's intervention strategies, such as improved grades resulting from peer-tutoring in math, in determining whether the student has a disability but could consider them in determining the individual educational needs.⁵⁷

⁵⁶ 34 C.F.R. § 104.35. Similarly, school districts must not use the intervention system to delay or fail to make a decision to grant or refuse a parent's or teacher's request for an evaluation of a student under the IDEA. *See* OSEP Memorandum, p. 2.

⁵⁷ 42 U.S.C. § 12102 (reasonable accommodations or auxiliary aids are examples of mitigating measures). It should not be necessary to suspend mitigating measures (including any ameliorative intervention strategies) in order to evaluate what the condition of the student would be in his or her unmitigated state.

Summary—School Districts’ Obligation to Identify and Evaluate Students with Disabilities

- Section 504 requires a school district to identify and conduct an evaluation of any student who needs or is believed to need special education or related services because of a disability.
- A school district must evaluate students who are suspected of having any kind of disability in all specific or all related areas of educational need, even if the students do not fit into one suspected disability category or fit into multiple disability categories.
- Students who achieve satisfactory, or even demonstrate above-average, academic performance may still have a disability that substantially limits a major life activity and be eligible for special education or related aids and services because the school district is not meeting their needs as adequately as the needs of nondisabled students are met.
- Implementation of intervention strategies, such as interventions contained within a school’s RTI program, must not be used to delay or deny the Section 504 evaluation of a student suspected of having a disability and needing regular or special education and related aids and services as a result of that disability.⁵⁸

⁵⁸ 34 C.F.R. §§ 104.33(b), 104.35(a).

What Are the Steps in Conducting an Evaluation and Determining Placement Under Section 504?

Generally, the evaluation and placement determinations regarding whether a student is eligible to receive services under Section 504 must address two questions:

- (1) Does the student have a disability under Section 504?
- (2) If so, does the student need regular or special education under Section 504, related aids and services, or supplementary aids and services because of the disability, and in what setting should the student receive them?

In interpreting evaluation data and in making placement decisions concerning students who have ADHD, school districts must gather and analyze information from a variety of sources, which can include “aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior.”⁵⁹ Additionally, school districts could discover necessary and helpful information from the student, the student’s parents and caregivers, teachers, and other professionals, such as psychologists and physicians. Although the district could request relevant information from parents, the district cannot require the parent to provide certain data or information before conducting an evaluation.⁶⁰ It is the district’s obligation to evaluate; it cannot shift the burden of that cost or obligation onto the parent.⁶¹

Remember, post-Amendments Act, the definition of disability is to be construed broadly and the determination of whether an individual has a disability should not demand extensive analysis.

⁵⁹ 34 C.F.R. § 104.35(c). Medical information can help inform the school about the student’s physical condition.

⁶⁰ Please see footnote 48 for further information about parental consent under Section 504.

⁶¹ 34 C.F.R. § 104.35.

First Question: Does the student have a disability?

Cautions for School Districts in the Section 504 Evaluation Process

A student has a disability under Section 504 if a major life activity is substantially limited by his or her impairment.

Nothing in Section 504 limits coverage or protection to those whose impairments concern learning.

A number of major life activities should be considered in determining whether a student has a disability within the meaning of Section 504, including, for example, thinking, reading, concentrating, or neurological or brain functions.

OCR has learned that some school districts mistakenly believe that the major life activity of learning must be substantially limited in order for a student to be eligible for FAPE services under Section 504, and that no other major life activity is relevant in the evaluation process.

A student's ability to learn may certainly be substantially limited by ADHD, but that is not the only way a student could be considered to have a disability and be eligible for services under Section 504. For example, one student with ADHD may be substantially limited in the ability to learn, but another student with ADHD may be substantially limited in the ability to concentrate.

In addition, because of the individualized nature of evaluations, school districts must be sure not to act on the basis of stereotypes or generalizations about the nature of ADHD in general, or its incidence in particular groups. While research has shown that boys are more likely than girls to have ever been diagnosed with ADHD (13.2 percent of boys were diagnosed with ADHD as opposed to 5.6 percent of girls),⁶² and that black and Hispanic children are less likely to be diagnosed with ADHD than white children,⁶³ a school district could inappropriately ignore the incidence of ADHD in girls, or in students of color, if it makes assumptions about sex, race or ethnicity.⁶⁴ More importantly, in acting upon such assumptions, school districts put such students at risk of delayed referral for evaluation, which would violate Section 504.

⁶² OSEP ADHD Resource, 2. See also CDC, *Key Findings: Trends in the Parent-Report of Health Care Provider-Diagnosed and Medicated ADHD: United States, 2003–2011*, <http://www.cdc.gov/ncbddd/adhd/features/key-findings-adhd72013.html>.

⁶³ Paul L. Morgan, et al., *Racial and Ethnic Disparities in ADHD Diagnosis From Kindergarten to Eighth Grade*, PEDIATRICS, June 24, 2013, <http://pediatrics.aappublications.org/content/pediatrics/early/2013/06/19/peds.2012-2390.full.pdf>.

⁶⁴ This would be a violation of Title IX and Title VI, as well. See footnote 47.

School Districts Cannot Consider the Ameliorative Effects of Mitigating Measures When Determining Substantial Limitation

When a school district suspects a student has ADHD and conducts an evaluation to determine disability, it must consider the student, in an unmitigated state, both in and out of school.⁶⁵ A student might not exhibit serious academic or behavioral challenges at school – perhaps due to self-management skills, or medication of which the school district may or may not be aware, or the nature of the impairment – but, in other settings, or later in the day, the limitations become more apparent and substantial.

As noted above, if the student is taking medication, the school district cannot consider any ameliorative effects of that medication, or any other mitigating measure, when evaluating whether the student is substantially limited in a major life activity.

Evidence showing that an impairment would be substantially limiting in the absence of the ameliorative effects of mitigating measures, e.g., medication, could include evidence of limitations that a person experienced prior to using a mitigating measure, or evidence concerning the expected course of a particular disorder absent mitigating measures. This is why it is also beneficial to involve the parent in the evaluation process, as parents would be an excellent resource to provide such evidence.

A student's use of mitigating measures can treat the impairment, thereby obscuring the substantial limitations of the impairment. In OCR's experience, school districts have sometimes discounted off-campus, but school-related, activities that a student engaged in to mitigate the effects of his or her ADHD. For example, a student with ADHD might take extra time to complete one homework assignment because it takes the student longer to employ the strategies developed over time to break down a study question, conduct the research, and write an essay. Even though that student may be timely in turning in homework assignments, she or he may still be substantially limited in a major life activity, such as thinking or organizing, because of ADHD. In fact, the student's use of those mitigating measures could be an indication to the school district that the student may have a disability.⁶⁶

⁶⁵ 29 U.S.C. §§ 705(20), 794.

⁶⁶ The *non*-ameliorative effects of mitigating measures, such as negative side effects of medication or burdens associated with following a particular treatment regimen, may be considered when determining whether an individual's impairment substantially limits a major life activity.

A student with ADHD may perform a major life activity in a different condition, manner, or amount of time than a student without ADHD.⁶⁷ This can explain why students who make satisfactory academic progress and are achieving good grades in academically rigorous classes may still have a disability and could be eligible for special education or related services.

School districts should not assume that a student’s academic success necessarily means that the student is not substantially limited in a major life activity and, therefore, is not a person with a disability.

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.⁶⁸ The student’s need for these mitigating measures could be evidence that the student has a substantially limiting impairment.

Remember, a student with ADHD is a person with a disability if, in an unmitigated state, he or she has a physical or mental impairment that substantially limits a major life activity, has a record of such an impairment, or is regarded as having such an impairment.

If the student has a disability, but does not need any special education or related aids or services from the school district, e.g., the student is taking medication that adequately treats the student’s ADHD, the school district is not required to provide aids or services. But, the student is still a person with a disability (that is, still has an impairment that substantially limits a major life activity), and so is protected by Section 504’s general nondiscrimination prohibitions and Title II’s statutory and regulatory requirements.⁶⁹

⁶⁷ “Condition, manner, or duration may also suggest the amount of time or effort an individual has to expend when performing a major life activity because of the effects of an impairment, even if the individual is able to achieve the same or similar result as someone without the impairment. For this reason ... the outcome an individual with a disability is able to achieve is not determinative of whether he or she is substantially limited in a major life activity.” (EEOC Interpretive Guidance).

⁶⁸ This concept, which has been explicitly stated by the EEOC concerning individuals with learning disabilities, applies with equal force to individuals with ADHD. “Individuals diagnosed with dyslexia or other learning disabilities will typically be substantially limited in performing activities such as learning, reading, and thinking when compared to most people in the general population, particularly when the ameliorative effects of mitigating measures, including therapies, learned behavioral or adaptive neurological modifications, assistive devices (e.g., audio recordings, screen reading devices, voice activated software), studying longer, or receiving more time to take a test, are disregarded as required under the ADA Amendments Act.” EEOC Interpretive Guidance; *see also* H.R. Rep. No. 110-730, p. 1, at 15 (2008). While the EEOC enforces Title I of the ADA, which prohibits disability discrimination in employment, all of the titles of the ADA have the same definition of disability.

⁶⁹ 34 C.F.R. §§ 104.4(b), 104.21-23, 104.37, 104.61 (incorporating 34 C.F.R. § 100.7(e)); 28 C.F.R. § 35.130(b).

Medical Assessments Could Be Necessary to Conduct the Evaluation

Another issue school districts should consider in evaluating students with ADHD is the need for a medical assessment.

For example, a parent might request the school district conduct a Section 504 individual evaluation of his or her child without having a prior diagnosis of any disorder. If a school district determines, based on the facts and circumstances of the individual case, that a medical assessment is necessary to conduct a Section 504 individual evaluation in order to determine whether a child suspected of having ADHD has a disability under Section 504 and, therefore, needs special education or related services,⁷⁰ the school district must ensure that the student receives this assessment at no cost to the student's parents.⁷¹

Note, there is nothing in Section 504 that requires a medical assessment as a precondition to the school district's determination that the student has a disability and requires special education or related aids and services due to his or her disability.⁷² (In fact, as mentioned earlier, the determination of whether an individual has a disability need not demand extensive analysis.)

If, however, a district believes a medical assessment is necessary and the parent volunteers to pay for a private assessment, the district must make it clear that the parent has a choice and can choose to accept a school-furnished assessment.⁷³ Compliance problems could arise when school districts and parents do not communicate clearly on this requirement.

⁷⁰ A specific diagnosis is not actually necessary if the school determines a student is substantially limited in a major life activity and that limitation is caused by a mental or physical impairment.

⁷¹ 34 C.F.R. §§ 104.33, 104.35, App. A (discussing Subpart D, ¶ 23) (“Recipients must also pay for psychological services and those medical services necessary for diagnostic and evaluative purposes.”). *See also* OSEP ADHD Resource, 9. If a school district does not have the appropriate personnel on staff to conduct a medical assessment for diagnostic and evaluative purposes, the district must make arrangements for the medical assessment at no cost to the parent.

⁷² 34 C.F.R. § 104.33(c).

⁷³ For example, Medicaid may cover the cost of a medical assessment through the “Early Periodic Screening, Diagnostic and Treatment” benefit (EPSDT) of Medicaid. For more information about how EPSDT relates to covering the costs of medical assessments, please visit <https://www.medicaid.gov/federal-policy-guidance/downloads/CIB-03-27-2013.pdf>.

Summary—Conducting Evaluations for Students with ADHD to Determine Whether the Student Has a Disability

- In determining if a student has a disability and needs special education or related services because of disability, school districts must consider all the potential major life activities that may be impacted by the student’s impairment, *not just learning*, and review facts concerning the condition, manner, or duration of a student’s performance of a major life activity.
- Never act on stereotypes and generalizations about students with ADHD. For example:
 - Monitor both male and female students carefully for ADHD, without relying on sex-based stereotypes.
 - Monitor students of all races carefully for ADHD, without relying on race-based stereotypes. Race could influence how a school perceives student behavior and thereby affect whether a student is evaluated for ADHD.
- School districts must interpret the term disability broadly and cannot consider the positive effects of mitigating measures in evaluating for disability.
- If the school district believes that a medical assessment is necessary to determine whether the student has ADHD and needs special education or related aids and services because of the ADHD, the student’s parents cannot be required to pay for it.

Second Question: Placement determination under Section 504: Does the student need regular or special education, related aids and services, or supplementary aids and services?

Many of the same steps and tools used to determine whether a student has a disability are also pertinent to determining the placement of the student. Under Section 504, a school district must ensure that the placement decision is made by a group of individuals that includes individuals who are knowledgeable about the student (often called a Section 504 team as discussed above), the meaning of the evaluation data, and the various placement options.⁷⁴ Further, the services must be tailored to the individual needs of the student.⁷⁵

Not every student with ADHD needs the same set of services, or any services at all.

If a school district determines that a student with ADHD has a disability as defined by Section 504, it could consider whether the student uses mitigating measures and whether those mitigating measures have an impact on the student's disability. This information could help the district determine whether the student needs special education or related services.

One student may require extra time on an examination, while another may have difficulty with multiple-choice testing and require a different testing format.

A third student may not require any academic services, but a behavioral intervention plan that teaches the student how to substitute her problematic behavior for more appropriate responses.

If, as a result of a properly conducted evaluation, the school district determines that the student does not need special education or related services, the district is not required to provide them. Section 504 does not obligate a school district to provide special education or related aids or services that the student does not need. But the school district must still conduct an evaluation before making that determination. Further, that student is still a person with a disability, because the student has an impairment that substantially limits a major life activity, and so is protected by Section 504's general nondiscrimination prohibitions (e.g., no retaliation, harassment, unlawful different treatment, etc.).⁷⁶

⁷⁴ This process is outlined in the Section 504 regulations at 34 C.F.R. § 104.35(c). OCR will view compliance with the IDEA's placement procedures at 34 C.F.R. §§ 300.114 through 300.117 as compliance with Section 504's placement procedures.

⁷⁵ 34 C.F.R. § 104.33(b).

⁷⁶ 34 C.F.R. §§ 104.4(b), 104.21-23, 104.37, 104.61 (incorporating 34 C.F.R. § 100.7(e)). Under Section 504, a recipient shall also make reasonable modifications in its policies, practices, or procedures when necessary to avoid discrimination on the basis of disability. *See Alexander v. Choate*, 469 U.S. 287, 300-01 (1985); *see also Se. Cmty. Coll. v. Davis*, 442 U.S. 397 (1979). Even if a school district determines that a student does not need special education or related services

If, as a result of a properly conducted evaluation, the school district determines that the student needs a related aid or service, the school district must provide it.

The administration of medication (or permitting a student to self-administer), for example, could be a related aid or service, or supplementary aid or service, that is part of the placement that must be addressed by the Section 504 team. The subject of medication administration could require consideration and a Section 504 Plan. If medication prescribed by a doctor needs to be taken during the school day, and a student cannot self-administer the medication, the school district must provide medication administration assistance to the student, as a part of FAPE.⁷⁷ If a student can self-administer the medication, school districts must ensure the student is provided with whatever aid or service he or she needs in order to allow the self-administration.⁷⁸ Medication alone might not mitigate the effects of the impairment sufficiently and related aids and services may still be required. Consequently, the subject of medication management, even absent any other issues, could require participation by the parents, student, and school district in the FAPE placement process under Section 504.

Section 504 requires that placement decisions be made by a group of persons, including persons knowledgeable about the child.⁷⁹ In general, school districts could ensure they are providing the necessary placement procedures required by Section 504 by considering and documenting parental input on what a student needs.

For instance, not every student with ADHD needs extra time on examinations taken in a quiet room, or placement at the front of a classroom. Some might require direct instruction to address the needs created by their disabilities, such as teaching how to break up a large, multi-step assignment into smaller parts, or ordering strategies.

School districts cannot simply group together a few aids and services and provide them in a blanket fashion to any student with ADHD.

because of a disability, it must still determine whether the student needs a reasonable modification of policies, practices, or procedures to ensure equal educational opportunities. The extent of a school district's obligation to make reasonable modifications is fact-dependent and requires a case-by-case analysis. For example, a school could consider modifying its homework policy and providing greater flexibility in meeting deadlines to a student with ADHD who consistently forgets his homework because of ADHD. (For a different student, one who does need special education or related services, this modification could be in a Section 504 Plan. As a related aid or service in a Section 504 Plan, the school also could teach the student skills or strategies for organizing his homework to ensure that it is completed and submitted. The school could also work with the student's parents to help establish that routine.)

⁷⁷ 34 C.F.R. § 104.33(b).

⁷⁸ *Id.*

⁷⁹ 34 C.F.R. § 104.35(c).

Each student’s needs may be different, and Section 504 requires school districts to provide for those individual educational needs.⁸⁰

Furthermore, parents can be an important source of information to the school district about what techniques, interventions, services and supports would be most effective in meeting that student’s needs.

Through investigating complaints and providing technical assistance to school districts, OCR has learned that some educators have the mistaken impression that placement options under Section 504 are limited to free or low-cost services, that provide limited, additional resources to students but may not be as robust or comprehensive as the special education and related services a student could receive under the IDEA. Likewise, some educators mistakenly equate reasonable modifications with low-cost or free services.

In making Section 504 FAPE determinations, the Section 504 team cannot limit its placement recommendations to those related aids or services that are free or low-cost, and cannot exclude them just because of their expense (although, of course, if there are equally effective related aids and services, nothing in Section 504 precludes a school district from choosing the less costly alternative).

If a student with a disability, including a student with ADHD, is eligible for FAPE under Section 504 but is not receiving FAPE services under the IDEA, that student is entitled to the provision of any services the placement team decides are appropriate to meet their individual educational needs, regardless of cost or administrative burden, and especially where such services have been provided to IDEA-eligible students in the past.⁸¹ Those services can be as varied and as comprehensive as necessary to meet a student’s need.⁸²

⁸⁰ 34 C.F.R. § 104.33(b).

⁸¹ 34 C.F.R. § 104.33. For discussion of a school district’s obligation to students with disabilities outside of the FAPE requirement, please see OCR, *Dear Colleague Letter: on Schools’ Obligation to Provide Equal Opportunity to Students with Disabilities to Participate in Extracurricular Athletics* (Jan. 25, 2013), <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201301-504.html>. For discussion of students with disabilities transitioning from secondary to postsecondary education, please see *Transition of Students With Disabilities To Postsecondary Education: A Guide for High School Educators*, (rev. March 2011), available at <http://www2.ed.gov/ocr/transitionguide.html>.

⁸² Cf. *Cedar Rapids Cmty. Sch. Dist v. Garret F.*, 526 U.S. 66, 77 (1999) (despite “legitimate financial concerns,” a school district is obligated under the IDEA to pay for any related service, including nursing services, that are necessary to enable a child with a disability to attend school.)

Because many of the complaints filed with OCR alleging discrimination on the basis of disability involve allegations that school district personnel failed to implement a Section 504 Plan or IEP, OCR cannot overemphasize the importance of making sure that school district personnel understand their obligations to implement appropriate plans for students with disabilities once the plans have been developed.

OCR has found that complaints of this type are often the result of either the student or teachers and other staff being unaware that a plan exists or the plan being so vaguely worded that the parties are unclear or disagree about what the plan requires.

In relation to students with ADHD, a school district may erroneously believe the related aids and services in an IEP or Section 504 Plan are optional, or unnecessary because the student is academically gifted, or that the student must specifically request these aids and services on an as-needed basis. A gifted student may still need specific and explicit instruction on how to reliably record homework assignments, organize information into class notes, start a multi-stage project, write more efficiently, or respond to challenges to his or her attention or concentration in day-to-day activities.

It is not the responsibility of the student with a disability to request FAPE. It is a school district's obligation to provide special education and/or related aids and services to students if the group of persons knowledgeable about the student has decided that the student needs such instruction, and/or those aids and services, and includes them in the student's Section 504 Plan or IEP.

Finally, it is important that school districts remember that a student's needs can change over time, and what once may have been an appropriate array of educational and/or related aids and services may no longer meet that student's needs. A student with ADHD might experience changes in his or her academic performance or behavior as he or she learns to cope with the impairment, adjust to medication, or learn new behavioral techniques, for example. Section 504 requires that a school district meet the individual educational needs of its students with disabilities. Therefore, reevaluations of a student with ADHD, and changes in placement, could become necessary.

Summary—Placement Determinations for Students with ADHD

The following are key principles that school districts could keep in mind when educating students with ADHD:

- Evaluate and provide supports for students with ADHD. Students who are evaluated properly and receive appropriate supports will often meet the challenge of school, including advanced course placement and honors classes.
- School districts must tailor services to the individual needs of the student, and must not limit placement options under Section 504 for students with disabilities to a predetermined universe of options that are unrelated to an individual determination of what particular students need, or because the school district already offers certain options.
- Students with ADHD who are eligible for FAPE under Section 504 are entitled to the provision of services the placement team decides are appropriate, regardless of cost or administrative burden, and especially where such services have been provided to IDEA-eligible students in the past.
- The special education or related aids and services a student needs that are included in a Section 504 Plan, or other document,⁸³ should be clear and as detailed as necessary so that the school and parents both understand what the plan requires.

⁸³ Implementation of an IEP developed in accordance with the IDEA is one means of meeting the Section 504 FAPE standard. 34 C.F.R. § 104.33(b)(2).

C. Section 504 Due Process (Procedural Safeguards) Protections for Students with Disabilities and Their Parents

In addition to school districts' obligation to establish grievance procedures that provide for the prompt and equitable resolution of complaints,⁸⁴ school districts must establish and implement a system of procedural safeguards for parents to appeal district actions regarding the identification, evaluation, or educational placement of students with disabilities, including students with ADHD, who need or are believed to need special education or related services.⁸⁵ This obligation may be more commonly known as “due process.”⁸⁶

The school district must tell parents and guardians about this due process system, notify them of any evaluation or placement actions, allow them to examine their child's records, afford them an impartial hearing with opportunity for parent or guardian participation and representation by counsel, and provide them a review procedure.⁸⁷

Note, a school district cannot satisfy the requirement to have due process procedures by relying on its grievance procedure, nor can a district require a parent to pursue a FAPE-related complaint through the grievance procedure before a hearing under the system of procedural safeguards will be granted. Districts must ensure that they have due process procedures that are available to parents, as required.⁸⁸

Districts also must ensure that they have properly identified the designated Section 504 coordinator.⁸⁹

⁸⁴ 34 C.F.R. § 104.7(b) (limited to school districts that employ 15 or more persons).

⁸⁵ 34 C.F.R. § 104.36.

⁸⁶ “Due process” is a concept derived from the IDEA. 20 U.S.C. § 1415(f); 34 C.F.R. §§ 300.507-511.

⁸⁷ 34 C.F.R. § 104.36. *See* footnote 91 regarding the obligation of school districts to effectively communicate with Limited English Proficient parents.

⁸⁸ 34 C.F.R. § 104.36.

⁸⁹ 34 C.F.R. § 104.7.

A school district that denies a parent’s request for a Section 504 evaluation of a student, regardless of the grounds for the denial, must inform the student’s parent of its decision and of the parent’s procedural safeguard rights, as set forth in the Section 504 regulations.⁹⁰ For example, if a parent requests an evaluation for disability for his or her child but is informed that the school district disagrees that the student should be evaluated, because the school district does not believe that the student has ADHD or needs special education or related services because of ADHD, that is in fact a denial, and the school district must inform the parent about these due process procedures.

A due process issue frequently raised in OCR complaints pertains to lack of notice of the Section 504 due process procedures. Many school districts publish notice of the availability of their Section 504 due process procedure in a student handbook and on their websites.⁹¹ But general notice of due process procedures does not relieve districts of their responsibility to give timely notice of due process rights when an event occurs for which parents may wish to avail themselves of the due process procedure.⁹² For example, if a parent requests that a school district evaluate her son for disability because she suspects he has ADHD, and the school district refuses to evaluate, the school district must ensure that the parent is aware of her due process right to appeal that district’s refusal.

This due process system requires providing the opportunity for parents to be heard on these issues by an impartial person who is knowledgeable about Section 504 requirements. The impartial person, often a hearing officer, cannot be an employee of the school district.⁹³ This due process responsibility may be satisfied by use of the IDEA hearing procedure if the due process system in the State in which the student lives allows consideration of students with Section 504-only disabilities without regard to IDEA considerations.⁹⁴ Regardless of the system used, it is the responsibility of each school district to ensure that an impartial due process hearing is promptly available when requested by a parent.

⁹⁰ 34 C.F.R. § 104.36.

⁹¹ School districts and SEAs have an obligation to take affirmative steps to ensure meaningful communication with Limited English Proficient (LEP) parents in a language they can understand and to adequately notify LEP parents of information about any program, service, or activity of a school district or SEA that is called to the attention of non-LEP parents. For more information see OCR, *Dear Colleague Letter: English Learner Students and Limited English Proficient Parents* (Jan. 7, 2015), <https://www.ed.gov/ocr/letters/colleague-el-201501.pdf>.

⁹² 34 C.F.R. § 104.36.

⁹³ *Id.* See also *Nondiscrimination in Federally Assisted Programs*, 43 Fed. Reg. 18630 (May 1, 1978), <http://www.ed.gov/policy/rights/reg/ocr/fm-1978-08-14.html>.

⁹⁴ 34 C.F.R. § 104.36. If a district chooses to use IDEA hearing procedure, the procedure must nevertheless adhere to the standards and requirements set forth in the Section 504 regulations concerning identification, evaluation, and placement.

Summary—School Districts Must Provide Parents and Students with Procedural Safeguards

- Parents may appeal district actions regarding the identification, evaluation, or educational placement of students with disabilities who need or are believed to need special education or related services.
- A school district that denies a parent’s request for a Section 504 evaluation of a student, regardless of the grounds for the denial, must inform the student’s parent of its decision and of the parent’s procedural safeguard rights, as set forth in the Section 504 regulations.
- School districts must ensure they provide notice of a parent’s due process protections.

D. Looking Toward the Future

OCR is available to support school districts in their ongoing civil rights compliance efforts. School districts could improve access and educational outcomes for students with ADHD by:

- Properly evaluating students and providing supports, and reevaluating when necessary. This means using appropriate evaluation tools depending on the student, not necessarily requiring the use of a particular assessment tool each time, and convening the entire Section 504 team to make placement decisions.
- Understanding that they cannot act on stereotypes or generalizations about students with ADHD, nor limit placement options to a predetermined universe of options that are unrelated to an individual determination of what a particular student needs.
- Providing the regular or special education and related aids and services the Section 504 placement team decides are appropriate, regardless of cost or administrative burden, or whether such services may have been provided only to IDEA-eligible students in the past.
- Creating clear, detailed, and individualized Section 504 Plans so that school districts and parents both understand what the plan requires.
- Training staff on the requirements of Section 504, including evaluating for disability and which behaviors may be linked to a disability, like ADHD.

If you would like more information about Section 504, Title II, or the other Federal civil rights laws enforced by OCR or would like to request technical assistance, please contact the enforcement office that serves your State or jurisdiction. Contact information for these offices is available at <https://wdcrobcolp01.ed.gov/cfapps/OCR/contactus.cfm>

Information about discrimination based on disability is on OCR's website at <http://www.ed.gov/policy/rights/guid/ocr/disability.html>.

Or, for further information, please contact OCR's Customer Service Team toll-free at 1-800-421-3481; TDD: 877-521-2172.

For more information on the IDEA requirements, please contact OSERS at:

Office of Special Education Programs

Office of Special Education and Rehabilitative Services

U.S. Department of Education

400 Maryland Ave., S.W.

Washington, DC 20202-7100

Telephone: (202) 245-7459

<http://idea.ed.gov>

<http://www.ed.gov/osers/osep/index.html>

E. Appendix

Departmental Resources

- OCR, *Dear Colleague Letter concerning ADA Amendments Act of 2008* (Jan. 19, 2012), <http://www.ed.gov/ocr/letters/colleague-201109.html>; OCR, *Questions and Answers on the ADA Amendments Act of 2008 for Students with Disabilities Attending Public Elementary and Secondary Schools* (Jan. 19, 2012), <http://www.ed.gov/ocr/docs/dcl-504faq-201109.html>.
- OSEP, *Identifying and Treating Attention Deficit Hyperactivity Disorder: A Resource for School and Home* (Aug. 2008), <http://www2.ed.gov/rschstat/research/pubs/adhd/adhd-identifying-2008.pdf>.
- OSEP, *Teaching Children with Attention Deficit Hyperactivity Disorder: Instructional Strategies and Practices*, Washington, D.C., (Feb. 2004), www.ed.gov/teachers/needs/speced/adhd/adhd-resource-pt2.doc.
- OCR, *Student Placement in Elementary and Secondary Schools and Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act* (Aug. 2010), <http://www.ed.gov/ocr/docs/placpub.html>.
- OCR, *Dear Colleague Letter: English Learner Students and Limited English Proficient Parents* (Jan. 7, 2015), <https://www.ed.gov/ocr/letters/colleague-el-201501.pdf>.
- OSEP, Memorandum to State Directors of Special Education, *A Response to Intervention (RTI) Process Cannot Be Used to Delay-Deny an Evaluation for Eligibility under the Individuals with Disabilities Education Act (IDEA)* (Jan. 21, 2011), <http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/osep11-07rtimemo.pdf>.
- OSEP, *Letter to Ferrara*, 112 LRP 52101 (Feb. 29, 2012), <http://www2.ed.gov/policy/speced/guid/idea/letters/2012-1/ferrara022912rti1q2012.pdf>.
- OCR, *Nondiscrimination in Federally Assisted Programs*, 43 Fed. Reg. 18630 (May 1, 1978), <http://www.ed.gov/policy/rights/reg/ocr/frn-1978-08-14.html>.
- OCR, *Free Appropriate Public Education for Students with Disabilities: Requirements Under Section 504 of The Rehabilitation Act of 1973* (Aug. 2010), <http://www.ed.gov/ocr/docs/edlite-FAPE504.html>.

OCR, *Dear Colleague Letter concerning Equal Access to Extracurricular Athletics for Students with Disabilities* (Jan. 25, 2013), <http://www.ed.gov/ocr/letters/colleague-201301-504.html>. See also OSEP, *Creating Equal Opportunities for Children and Youth with Disabilities to Participate in Physical Education and Extracurricular Athletics* (Aug. 2011), <http://www.ed.gov/policy/speced/guid/idea/equal-pe.pdf>

OCR, *Transition of Students with Disabilities to Postsecondary Education: A Guide for High School Educators* (Mar. 2011), <http://www.ed.gov/ocr/transitionguide.html>.

OCR and DOJ, *Joint Dear Colleague Letter: Electronic Book Readers* (June 29, 2010), <http://www.ed.gov/about/offices/list/ocr/letters/colleague-20100629.html>; OCR, *Frequently Asked Questions about the June 29, 2010 Dear Colleague Letter: Electronic Book Readers* (May 26, 2011), <http://www.ed.gov/ocr/letters/colleague-201105-pse.html>.

OCR, *Dear Colleague Letter: Charter Schools* (May 14, 2014), <http://www.ed.gov/ocr/letters/colleague-201405-charter.pdf>.

OCR and DOJ, *Joint Dear Colleague Letter: Nondiscriminatory Administration of School Discipline* (Jan. 8, 2014), <http://www.ed.gov/ocr/letters/colleague-201401-title-vi.html>.

Other Resources

Attention-Deficit/Hyperactivity Disorder (ADHD): (Centers for Disease Control and Prevention, CDC), <http://www.cdc.gov/ncbddd/adhd>

The National Resource Center (NRC) on ADHD: Fact Sheets (funded by CDC), <http://www.chadd.org/Understanding-ADHD/About-ADHD/Fact-Sheets-on-ADHD.aspx>

Interventions for Children with ADHD (Office of Special Education Technical Assistance Center), <https://www.pbis.org/resource/702/interventions-for-children-with-adhd-apbs-08>.

ADHD by the Numbers: Facts, Statistics, and You (Center for Parent Information and Resources, CPIR), <http://www.parentcenterhub.org/repository/adhd-facts-statistics-you/>.

Attention-Deficit/Hyperactivity Disorder (ADHD) (Center for Parent Information and Resources, CPIR), <http://www.parentcenterhub.org/repository/adhd/>.