



# The Many Faces of ADHD: Identifying and Programming Under Section 504

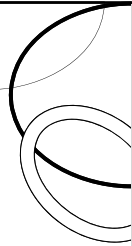
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## **I. What is ADHD?**

Under the DSM-V, there are three different types of ADHD, which are categorized depending on which symptoms are the strongest:

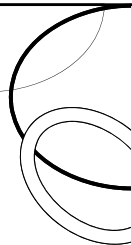
- 1) Predominantly inattentive type;
- 2) Predominantly hyperactive-impulsive type; and
- 3) Combined type (where symptoms of the first two types are equally present)



## **1. What is ADHD?**

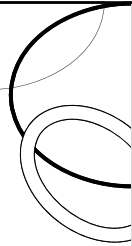
Every type of ADHD affects the functioning of the parts of the brain related to thinking, concentrating, and planning.

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.



## **2. If a student has ADHD, does that student automatically qualify for Section 504?**

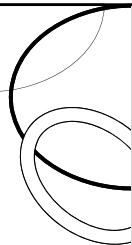
A diagnosis of ADHD is evidence that a student may have a disability. OCR will presume, however, unless there is evidence to the contrary, that a student with a diagnosis of ADHD is substantially limited in one or more major life activities.



### **3. What is the criteria for eligibility under Section 504?**

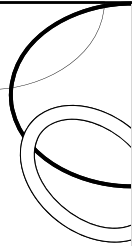
Under Section 504, a student with a disability is one who meets any of the following criteria:

- 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.



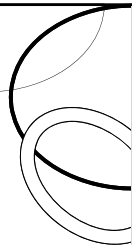
### **4. Under Section 504 does the committee just look at the major life activity of learning or school to determine eligibility in school settings?**

OCR has indicated 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.



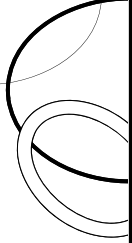
## **5. What are some examples of a major life activity that could be substantially limited by ADHD?**

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



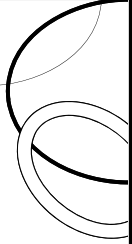
## **6. When would a school be required to evaluate for ADHD under Section 504?**

If a district employee perceives or receives information to lead them to suspect that a student has ADHD and is in need of accommodations, the school district must evaluate to determine if the impairment substantially limits that student in a major life activity.



## **6. When would a school be required to evaluate for ADHD under Section 504?**

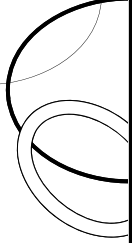
In the context of students with ADHD, it is important that school districts consider conducting an evaluation when students demonstrate to teachers signs of needing more interventions that are typically provided in general education to meet their individual educational needs as adequately as the needs of their non-disabled peers.



## **7. What would be the signs that would lead school staff to suspect that the student has ADHD that needs more than what is normally provided in class?**

OCR has given examples of signs such as:

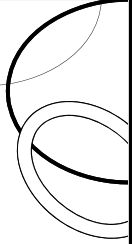
- Considerable restlessness or inattention inappropriate for their age & grade level;
- Trouble organizing tasks and activities; or
- Communication or social skill deficits



## **7. What would be the signs that would lead school staff to suspect that the student has ADHD that needs more than what is normally provided in class?**

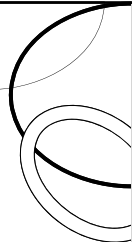
OCR has emphasized that no particular combination of the above is necessary for an evaluation to be required.

School 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.



## **8. What if the student is doing well academically, would that preclude the student from qualifying for Section 504?**

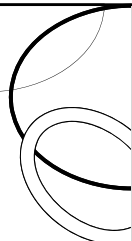
No. While academics are an important aspect of educational need, it is only one part. Educational need also includes behavior and social skills. A school district must evaluate a student if it believes the student has a disability and believes the student needs special education or related services as a result of that disability, even if the student only exhibits behavioral challenges.



## **9. Can a student receive services under RTI before being referred to Section 504?**

OCR has indicated that school districts run afoul of the Section 504 obligation to evaluate for disability and need for special education or related services when they:

- 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
- Categorically require that data from an intervention strategy must be collected and incorporated as a necessary element of an evaluation.



## **10. How does a school evaluate for ADHD under Section 504?**

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 conditions, social or cultural background, and adaptive behavior. Additionally, school districts should obtain information from the student and the student's parents and caregivers, teachers, and other paraprofessionals.



## **11. Can the school require information from parents before determining eligibility?**

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. It is the district's obligation to evaluate; it cannot shift the burden of that cost or obligation to the parent.



## **12. Can a parent request an evaluation under Section 504 for ADHD?**

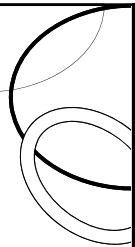
Yes. A parent can request an evaluation to address a student's academic or behavioral difficulty. When such a request is made, the school must either conduct an evaluation to determine whether the student has a disability and, because of the disability, needs special education or related services, or 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.





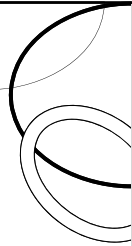
**13. If the student with ADHD is taking medication and is performing well in all areas, would that disqualify the student from Section 504 eligibility?**

If the student is taking medication, the school 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.



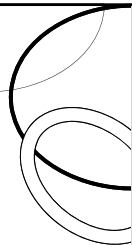
**14. If the student is doing well with the medication, does the student need an accommodation plan?**

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 is protected by Section 504's general nondiscrimination prohibitions and Title II's statutory and regulatory requirements.



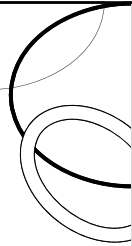
## **15. Is a medical diagnosis of ADHD necessary for a determination of eligibility under Section 504?**

OCR has stated that 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. In fact, OCR has provided that the determination of whether an individual has a disability does not demand extensive analysis. However, if the school is requiring it, it must be at no cost to the parents.



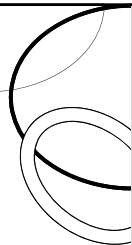
## **16. Can a school require a medical diagnosis for a determination of eligibility under Section 504?**

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



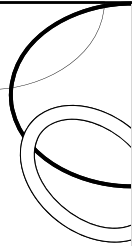
## **17. When would a school be required to evaluate for ADHD under IDEA?**

A school 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. This obligation is commonly known as “Child Find”.



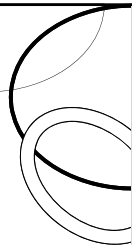
## **18. What is the criteria for eligibility under IDEA for ADHD?**

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.



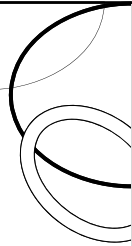
## **19. Under what eligibility categories would a student with ADHD qualify under IDEA?**

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.



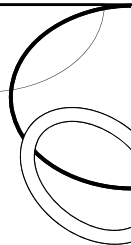
## **20. If a physician completes an OHI form for ADHD, does the student automatically qualify for services under IDEA as OHI?**

No. While a physician's completion of an OHI form is part of the eligibility criteria under OHI, the determination of whether it is adversely affecting educational performance is based upon school information. Teacher information as to how the student is performing in the classroom is essential to an OHI determination. Additionally, there must be a determination that the student is in need of special education or related services in order to meet the OHI eligibility.



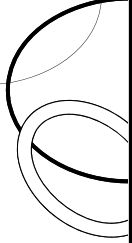
## **21. Can a psychologist complete an OHI form under IDEA?**

No. The IDEA regulations require that physician complete the form.



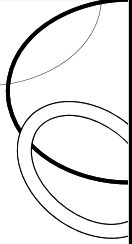
## **22. Can the school require the parent to get a physician to diagnose a student with ADHD?**

If it is requested by the district, the district is financially responsible for any costs associated with it.



## **23. Under what other eligibility categories would a student with ADHD qualify under IDEA?**

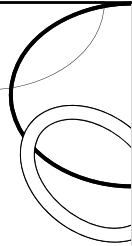
OCR has stated that eligibility under the IDEA for a student with ADHD is not limited to the OHI category. OCR has given the example that students with ADHD can be eligible for services under the specific learning disability or emotional disturbance categories if they meet the criteria applicable to those categories set forth in the IDEA regulations.



## **24. If a student is found ineligible for special education for ADHD, is the school obligated to consider eligibility under Section 504?**

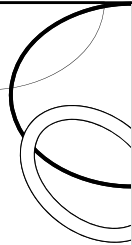
Yes. Finding a student with ADHD ineligible for special education under IDEA does not relieve the school district of its obligation to evaluate the student, as appropriate, under Section 504.

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.



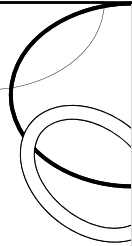
**25. What kind of accommodations might occur for a student who has ADHD under Section 504?**

An accommodation plan for a student with ADHD, for example, could include behavioral interventions, assistance with organization, and additional time to complete assignments or tests.



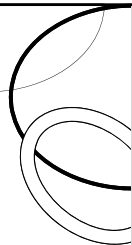
**26. Who receives a copy of the Section 504 accommodation plan?**

All of the teachers working with the student need to receive a copy of the plan.



## **27. What is the consequence to the school if the staff did not receive the plan?**

OCR has stated that historically, 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 an equal educational opportunity. It is highly recommended that the teachers sign for the accommodation plan to show that it was provided.



## **28. Can a parent demand specific accommodations for their student under Section 504?**

While parental input is important, the 504 committee must make an accommodation plan that meets the individual needs of the student. The student's accommodations should be based upon what the student needs in order for the student's needs to be met as adequately as non-disabled peers.





## **Question and Answer Session**



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