

C.H.A.D.D. Facts: Educational Rights for Children with ADD

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Children with Attention Deficit Disorders (ADD) are guaranteed a free and appropriate public education by two federal laws — the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act of 1973. Children with ADD must receive access to special education and/or related services when needed; this education must be designed to meet each child's unique educational needs through an individualized education program (IEP) under IDEA, or in a comparable 504 plan tailored to a child's specific needs. These two federal laws may require a multidisciplinary team evaluation of a child with ADD to determine when and whether special education and/or related services are needed.

Historically, many children with ADD lacked access to IDEA and 504 legal protection because schools either did not know enough about ADD to consider it a disability, or misunderstood the nature of ADD were often told these children did not qualify for such services unless they met eligibility criteria developed for other disabilities, such as specific learning disability or serious emotional disturbance, without regard to the needs created by their ADD.

In the late 1980s, Congress became aware of the lack of meaningful education for many children with ADD. In 1990, Congress ordered a U.S. Department of Education "Notice of Inquiry" to solicit public comments about how schools throughout the country were serving children with ADD. The Department received over 2,000 written comments. In response to such comments and the urging of CH.A.D.D. and others, the Department issued a "Policy Clarification Memorandum" on September 16, 1991. This Memorandum, which legally binds all public schools and all private schools receiving federal funds, made clear that children with ADD may qualify for special education and related services *solely* on the basis of their ADD when it significantly impairs educational performance or learning. The Memorandum recognized children with ADD as eligible for both IDEA and Section 504 services when the ADD causes such impairment.

Federal Laws and Children With ADD

The U.S. Department of Education Memorandum stated that students with ADD may be eligible for services under Part B of the IDEA when the ADD is a "chronic or acute health problem resulting in limited alertness which adversely affects educational performance. Thus children with ADD... should be classified as eligible for the services under the 'other health impaired' category in instances where the ADD is a chronic or acute health problem that results in limited alertness which adversely affects educational performance." As with all other disabilities, however, it must be determined that ADD has significant negative impact on a child's educational performance. A parent's suspicion that a child has ADD is not sufficient to require a school system evaluation under the IDEA — an adverse effect on an educational performance must also be reflected in the child's school work or school behavior. If an evaluation is warranted, it must be provided at no cost to the parents. This includes any medical component of the evaluation; no part of the evaluation is required to be the financial responsibility of the parents even if they have health insurance.

The Policy Memorandum further noted that "children with ADD are also eligible for services under Part B (of the IDEA) if the children satisfy the criteria applicable to other disability categories. For example, children with ADD are also eligible for services under the 'specific learning disability' category of Part B if they meet the criteria...or under the 'seriously emotionally disturbed' category of Part B if they meet the criteria...."

Section 504 is a civil rights law prohibiting discrimination against persons with disabilities. All school systems that receive federal funds must comply with Section 504 by addressing the needs of children with disabilities as adequately as the needs of non-disabled children. Section 504, like the IDEA, requires schools to provide children with disabilities a free and appropriate public education. There is, however, an important difference between Section 504 and the IDEA. To be eligible under the IDEA, a child must have a disability that requires special education services. Section 504, on the other hand, defines a

qualified person as anyone with a physical or mental impairment that substantially limits one or more major life activities, including learning. Thus, children who do not need special education may still be guaranteed access to related services under Section 504. Behavioral problems by themselves may make child eligible for services under Section 504. The 1991 Policy Clarification Memorandum provided several examples of classroom adaptations for children with ADD, such as:

- tailoring homework assignments;
- providing a structured learning environment;
- simplifying instructions about assignments;
- supplementing verbal instructions with visual instructions;
- using behavioral management techniques;
- modifying test delivery;
- using tape recorders; and
- computer-aided instructions

If a parent disagrees with a school's determination either not to provide an evaluation or not to provide services, parents have the right to appeal the decision. The school must inform the parents of their rights, including the right to an impartial hearing and the right to challenge any adverse decision in court. Families who prevail in court proceedings can recover attorney fees and be awarded injunctive relief and, possibly, monetary damage.

The Americans with Disabilities Act (ADA), enacted in 1990, provides another legal means of requiring all educational institutions, other than those operated by religious organizations, to meet the needs of children with ADD. Title II of the Act, applicable to all public schools, prohibits the denial of educational services, programs or activities to students with disabilities and discrimination against all such students once enrolled. Title III of the Act applies these same prohibitions to nonsectarian private schools.

Ensuring Services For Children with ADD

Despite the protection guaranteed by the IDEA and Section 504, many children with ADD continue to be denied access to an appropriate range of special education and/or related services. Myths and ignorance about ADD continue, even though scientific research has documented ADD as a neurobiological disability. Children with ADD who do not exhibit hyperactivity often "get lost" in the classroom, their disability going unnoticed, and their educational disabilities considered "unspectacular." The result can be an unchecked march towards frustration, low self-esteem, school failure, and emotional difficulties.

CH.A.D.D. has various recommendations for any parent who suspects that a child's educational performance is being adversely affected by ADD.

- Meet with your child's teacher to share your concerns. Teachers often have similar concerns and welcome the opportunity to discuss these with parents.
- You may request an evaluation of your child at any time. All requests for evaluations and services should be made in writing, dated, and a copy of such request kept. An example of such a letter appears on page 4.
- Once the evaluation is complete, with the evaluation team and parents in agreement that special education and/or related services are needed, an individual education plan (IEP) will be developed. Parents should play an active role in preparing the IEP. This plan is a legal document which the school must follow. Once the IEP is completed, you or the school can request changes to it, but no changes can be made without your approval. The IEP will be reviewed each year with any needed changes made.
- Keep careful records. This should include a record of observations reported by your child's teachers and any relevant communications between home and school. All letters sent to the school should be copied and filed. Many parents use a 3-ring binder to keep all relevant records and documents. This information will prove very useful if you and the school disagree about services for your child.
- Keep in mind that the findings of the evaluation team are not final. You have the right to appeal the conclusions. The school is required to provide you with information about appeal procedures.

- Parents and their children are guaranteed rights under federal and state laws. The process for ensuring these rights, however, can be confusing and intimidating. Check with your child's school or a local CH.A.D.D. chapter about a parent advocate service in your community. It may also be necessary to retain an attorney if you decide to appeal a school's decision because it is very likely that the school district will have its own legal counsel in such an appeal. A local CH.A.D.D. chapter parent advocate service may be able to help locate a qualified attorney if one is needed.

Sample Letter

Dear Principal:

I am the parent of _____, whose date of birth is _____ and who is a student in the ____ grade. _____ was recently diagnosed with an attention deficit disorder. Since _____ entered school, teachers have been raising concerns about (his)(her) academic performance and behavior. My child is not doing well in school and may need special education services. I am therefore requesting a multi-disciplinary team evaluation to determine if _____ is eligible for special education and/or related services under both the IDEA (including the IDEA "Other Health Impaired" category) and Section 504, in accordance with the U.S. Department of Education Policy Memorandum dated September 15, 1991, plus the public education regulations of this state. I hereby give consent for this evaluation to be done.

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

Sincerely,

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