

There are 2 main laws protecting students with disabilities—including those with ADHD: 1) the Individuals with Disabilities Education Act of 1997 (**IDEA**) and 2) **Section 504** of the Rehabilitation Act of 1973. IDEA is special education law. Section 504 is a civil rights statute. Both laws guarantee to qualified students a free and appropriate public education (FAPE) and instruction in the least restrictive environment (LRE), which means with their peers who are not disabled and to the maximum extent appropriate to their needs.

Because there are different criteria for eligibility, services/supports available, and procedures and safeguards for implementing the laws, it is important for parents, educators, clinicians, and advocates to be well aware of the variations between IDEA and Section 504 and fully informed about the respective advantages and disadvantages.

Additional Resources

1. *Advocacy Manual: A Parents' How-to Guide for Special Education Services*
Learning Disabilities Association of America, 1992. Contact the publisher at 4156 Library Rd, Pittsburgh, PA 15243 or 888/300-6710.
2. *Better IEPs: How to Develop Legally Correct and Educationally Useful Programs*
Barbara Bateman and Mary Anne Linden, 3rd edition, 1998. Contact the publisher, Sopris West, at 303/651-2829 or <http://www.sopriswest.com>.
3. *The Complete IEP Guide: How to Advocate for Your Special Ed Child*
Lawrence Siegel, 2nd edition, 2000. Contact the publisher, Nolo, at 510/549-1976 or <http://www.nolo.com>.
4. *Negotiating the Special Education Maze: A Guide for Parents and Teachers*
Winifred Anderson, Stephen Chitwood, and Deidre Hayden; 3rd edition; 1997. Contact the publisher, Woodbine House, at 6510 Bells Mill Rd, Bethesda, MD 20817 or 800/843-7323.
5. Children and Adults With Attention-Deficit/Hyperactivity Disorder
<http://www.chadd.org>
6. Education Resources Information Center
<http://ericir.syr.edu>
7. Internet Resource for Special Children
<http://www.irsc.org>
8. San Diego ADHD Web Page
<http://www.sandiegoadhd.org>
9. National Information Center for Children and Youth with Disabilities
<http://www.nichcy.org>
10. Parent Advocacy Coalition for Educational Rights Center
<http://www.pacer.org>

Glossary of Acronyms

ADHD

Attention-deficit/hyperactivity disorder

BIP

Behavioral Intervention Plan

ED

Emotional disturbance

FAPE

Free and appropriate public education

FBA

Functional Behavioral Assessment

IDEA

Individuals with Disabilities Education Act

IEP

Individualized Education Program

IST

Instructional Support Team

LRE

Least restrictive environment

MDR

Manifestation Determination Review

MDT

Multidisciplinary Team

OHI

Other health impaired

SLD

Specific learning disability

SST

Student Study Team

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Revised - 1102

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IDEA

Who Is Eligible?

IDEA strongly emphasizes the provision of special education and related services that enable students to access and progress in the general education program. Sometimes students with ADHD qualify for special education and related services under the disability categories of “specific learning disability” (SLD) or “emotional disturbance” (ED). For example, a child who has ADHD who also has coexisting learning disabilities may be eligible under the SLD category. Students with ADHD most commonly are eligible for special education and related services under the IDEA category of “other health impaired” (OHI). Eligibility criteria under this category require that the child has a chronic or acute health problem (eg, ADHD) causing limited alertness to the educational environment (due to heightened alertness to environmental stimuli) that results in an adverse effect on the child’s educational performance to the degree that special education is needed.

Note: The adverse effect on educational performance is not limited to academics, but can include impairments in other aspects of school functioning, such as behavior, as well.

How Does a Parent Access Services Under IDEA?

- **Parents or school personnel may refer a child** by requesting an evaluation to determine eligibility for special education and related services. It is best to put this request in writing.
- Within a limited time frame, **the school’s multidisciplinary evaluation team, addressing all areas of the child’s difficulties, develops an assessment plan.**
- After parents or guardians consent to the assessment plan, **the child receives a comprehensive evaluation** by the multidisciplinary team of school professionals.
- After the evaluation, **an Individualized Education Program (IEP) meeting is scheduled** with the team, including parents, teacher(s), special education providers, the school psychologist and/or educational evaluator, a school system representative, and the student (as appropriate).

- Based on the results of the evaluation, as well as other input provided by parents and/or other team members, **the team decides whether the child meets eligibility criteria** for special education under one of the categories defined by IDEA.
- **An IEP is developed and written for qualifying students through a collaborative team effort.** It is tailored and designed to address the educational needs of the student.
- The **IEP goes into effect** once the parents sign it and agree to the plan.
- The IEP must address the following:
 - Present levels of educational performance, including how the child’s disability affects his or her involvement and progress in the general curriculum
 - Delineation of all special education and related services, modifications (if any), and supports to be provided to the child or on behalf of the child
 - Annual goals and measurable, short-term objectives/benchmarks
 - The extent (if any) to which the child will not participate with children in the regular class and other school activities
 - Modifications (if any) in the administration of statewide and district-wide tests the child will need to participate in those assessments
 - Dates and places specifying when, where, and how often services will be provided, and by whom

What Happens After the IEP Is Written?

1. Services are provided. These include all programs, supplemental aids, program modifications, and accommodations that are spelled out in the IEP.
2. Progress is measured and reported to parents. Parents are informed of progress toward IEP goals during the year, and an annual IEP review meeting is required.
3. Students are reevaluated every 3 years (triennial evaluation) or sooner if deemed necessary by the team or on parent/teacher request.

Adapted from Rief S. *The ADD/ADHD Book of Lists*. San Francisco, CA: Jossey-Bass Publishers; 2002, and from material developed by Laurel K. Leslie, MD, San Diego ADHD Project.

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Section 504

Who Is Eligible?

Students with ADHD also may be protected under Section 504 of the Rehabilitation Act of 1973 (even if they do not meet eligibility criteria under IDEA for special education). To determine eligibility under Section 504 (ie, the impact of the disability on learning), the school is required to do an assessment. This typically is a much less extensive evaluation than that conducted for the IEP process.

Section 504 is a federal civil rights statute that:

- Protects the rights of people with disabilities from discrimination by any agencies receiving federal funding (including all public schools)
- Applies to students with a record of (or who are regarded as having) a physical or mental impairment that substantially limits one or more major life function (which includes learning)
- Is intended to provide students with disabilities equal access to education and commensurate opportunities to learn as their peers who are not disabled

How Does a Parent Access Services Under Section 504?

- **Parents or school personnel may refer a child** by requesting an evaluation to determine eligibility for special education and related services. It is best to put this request in writing.
- **If the school determines that the child's ADHD *does* significantly limit his or her learning**, the child would be eligible for a 504 plan designating:
 - Reasonable accommodations in the educational program
 - Related aids and services, if deemed necessary (eg, counseling, assistive technology)

What Happens After the 504 Plan Is Written?

The implementation of a 504 plan typically falls under the responsibility of general education, not special education. A few sample classroom accommodations may include:

- Tailoring homework assignments
- Extended time for testing
- Preferential seating
- Supplementing verbal instructions with visual instructions
- Organizational assistance
- Using behavioral management techniques
- Modifying test delivery

What Do Section 504 and IDEA Have in Common?

Both:

- Require school districts to provide free and appropriate public education (FAPE) in the least restrictive environment (LRE)
- Provide a variety of supports (adaptations/accommodations/modifications) to enable the student to participate and learn in the general education program
- Provide an opportunity for the student to participate in extracurricular and nonacademic activities
- Require nondiscriminatory evaluation by the school district
- Include due process procedures if a family is dissatisfied with a school's decision

Which One Is Right for My Child—a 504 Plan or an IEP?

This is a decision that the team (parents and school personnel) must make considering eligibility criteria and the specific needs of the individual student. For students with ADHD who have more significant school difficulties:

IDEA usually is preferable because:

- It provides for a more extensive evaluation.
- Specific goals and short-term objectives are a key component of the plan and regularly monitored for progress.
- There is a much wider range of program options, services, and supports available.
- It provides funding for programs/services (Section 504 is non-funded).
- It provides more protections (procedural safeguards, monitoring, regulations) with regard to evaluation, frequency of review, parent participation, disciplinary actions, and other factors.

A 504 plan would be preferable for:

- Students who have milder impairments and don't need special education. A 504 plan is a faster, easier procedure for obtaining accommodations and supports.
- Students whose educational needs can be addressed through adjustments, modifications, and accommodations in the general curriculum/classroom.

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**Sample Letter #1:
Request for Assessment for Educational Services Under Section 504**

(Date)

School Site Principal's Name
School Name
Address

RE: (Student's Name and Grade)

Dear (Principal's Name)*:

I am the parent of (Student's Name), who is in Mr/Ms (Teacher's Name)'s class. (Student's Name) has been experiencing school problems for some time now. We have been working with the teacher(s) to modify (his/her) regular education program but **(we have not seen any improvement or the problems have been getting worse)**. Therefore, I wish to request an assessment of my child for appropriate educational services and interventions according to the provisions of Section 504 of the Rehabilitation Act.

I look forward to working with you as soon as possible to develop an assessment plan to begin the evaluation process. I request copies of the assessment results 1 week prior to the meeting.

Thank you for your assistance. I can be reached by phone at (Area Code and Phone Number).

The best time to reach me is (times/days).

Sincerely,

(Sign Your Name)
(Print Your Name)
(Address)
(Telephone Number)

Adapted from San Diego Learning Disabilities Association.
<http://ldasandiego.org/>

Note: Remember to keep a copy for your files.

*If the principal does not respond, contact the district 504 coordinator. It is recommended that you either write a letter or document your phone conversation. If you do not get a response, you have the right to file a compliance complaint.

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**Sample Letter #2:
Request for Assessment for Special Education**

(Date)

School Site Principal's Name:

School Name

Address

RE: (Student's Name and Grade)

Dear (Principal's Name)*:

I am the parent of **(Student's name)** who is in Mr/Ms **(Teacher's Name)**'s class. **(Student's Name)** has been experiencing school problems for some time now. These problems include: _____

We have been working with the teacher(s) to modify **(his/her)** regular education program but **(we have not seen any improvement or the problems have been getting worse)**. Therefore, I wish to request an assessment of my child for possible special education services according to the provisions of IDEA.

I look forward to working with you within the next 15 days to develop an assessment to begin the evaluation process. Please ensure that I receive copies of the assessment results 1 week prior to the IEP meeting. Thank you for your assistance. I can be reached by phone at **(Area Code and Phone Number)**. The best time to reach me is **(times/days)**.

Sincerely,

Sign your name
Print your name
Street Address
City, State, ZIP

Doctor's Signature
License Number
Practice Address
City, State, ZIP

Adapted from San Diego Learning Disabilities Association.
<http://ldasandiego.org/>

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