

Your Child's Educational Rights

Three important federal laws impact the education of students with ADD or ADHD:

- **IDEA:** (Individuals with Disabilities Education Act) A federal education law guaranteeing a free appropriate public education to all students with disabilities. This law applies primarily to students served by public schools, ages birth through high school, and in some cases through age 21.
- **Section 504:** (Section 504 of the Rehabilitation Act of 1973) A federal civil rights law prohibiting discrimination against people with disabilities in programs that receive any financial aid from the federal government, including all schools, public and private, as well as colleges and technical schools.
- **ADA:** (Americans with Disabilities Act) A federal civil rights law, broader than 504, that prevents discrimination against people with disabilities in private non-religious schools and the workplace.

Not all children will be eligible for services under these laws. But typically a student will be eligible if his or her learning is adversely affected by the attention deficit disorder. According to the law, eligible students will receive a Free Appropriate Public Education, known as FAPE.

Researchers tell us that of all students with ADD or ADHD, approximately 50 percent will qualify for services under IDEA and almost all qualify under Section 504. So if a student with ADD or ADHD is struggling in school but is not eligible for services under IDEA then the school should automatically pursue eligibility under Section 504! Regardless of eligibility category, most students with attention deficits will spend the majority of their time in regular classrooms rather than special education classes.

Highlights of Key Issues: Briefly here are some highlights of key issues that you need to understand. You can read more about these issues in my books or at the websites I have listed below.

IDEA provides for:

- **FAPE** (see above)
- **An IEP** (Individualized Education Program), a written educational plan. The IEP should address:
- **Strengths and present educational performance** (don't forget to include executive function deficits-disorganization, forgetfulness, working memory deficits, slow processing speed)
- **Goals and objectives**
- **Services to be provided** (accommodations may be given-for example, extended time on assignments or tests)
- **Dates of service**
- **Evaluation procedures**
- **An individualized transition plan**, by age 16 that outlines a plan for life after graduation
- **Parental involvement** as "equal participants"
- **A right to due process**
- **Education in the least restrictive environment** (LRE), hopefully in a regular classroom

- **Non-discriminatory evaluations**, it should also address areas related to ADHD, for example deficits in working memory and written expression
- **Related services**, such as counseling or skill instruction-anger management, time management, problem solving.
- **Positive interventions** to prevent problems (learn more about Functional Behavior Assessments [FBA] and Behavior Intervention Plans [BIP])
- **Some limits on lengths of suspensions**

You may be told that your child is not eligible for an IEP under IDEA because he or she doesn't meet criteria. It's true our children may not meet criteria for Specific Learning Disabilities (SLD) but the Federal Office of Special Education suggests that schools consider the **Other Health Impairment (OHI)** category, if your child doesn't meet SLD criteria. Ask if they evaluated your child for OHI.

OHI "means having limited strength, vitality, or alertness due to chronic or acute health problems that adversely affect a student's educational performance." The term limited alertness was clarified in the 1997 IDEA revisions as *"a child's heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment."*

Section 504 states, "No otherwise qualified individual with a disability in the United States...shall solely by reason of his or her disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance..." Further the law defines a qualified individual as anyone who *"has a physical or mental impairment which substantially limits one or more of such person's major life activities."* *Learning* is a "major life activity."

Section 504 provides for:

- FAPE
- An educational plan
- Accommodations or supplemental services

Importance for accommodations in college: Having either an IEP or Section 504 plan will help document that a student also needs similar extra supports or accommodations in college. Section 504 applies to colleges (IDEA does not) and every college is required to have a Section 504 Coordinator.

Finding Up-to-date Legal Information: Writing up-to-date information about these laws is very difficult for several reasons:

- **Laws and policies change.** Congress is currently considering changes to IDEA as of this writing. So to get the most up-to-date information I suggest you check four other websites:

www.chadd.org

www.nichcy.org

www.idonline.org(questions may be submitted to special education attorney, Matt Cohen)

www.pacer.org

Otherwise, for basic information I suggest you read the 50 pages I wrote in *Teaching Teens with ADD and ADHD* (2000) and roughly 40 pages in *Teenagers with ADD* (second edition due 2005). In addition, my friend and colleague Dixie Jordan has written an excellent guide, ***Honorable Intentions: a parent's guide to education planning***

for children with emotional or behavioral disorders (2000) (150 pages). It is available through PACER Center, www.pacer.org

- **Laws require interpretation.** School officials, advocates and attorneys don't always agree on the interpretation of the existing law.
- **Interpretation of the law may change** with new court rulings.
- **Regulations vary from state to state.** States can pass laws and regulations that may provide more specific detail than federal law.