

Accommodating for Children's Special Needs in School: Assistance from Section 504 and Federal Regulations Concerning Learning Disabilities

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Learning is a complex process which involves many skills which we often take for granted such language production and understanding, visualization of problems, coordination for writing, memory, attention, the ability to see, hear, the ability to sit still, and the ability to sustain repetitive activity for long periods of time. A variety of emotional, learning, developmental, and medical conditions can influence these basic skills and interfere with a child's success and self-esteem in school.

While it is obvious that a child with hearing or visual difficulties should be seated near the front of the room, other conditions and remedies are often as simple but less obvious. In the past, and unfortunately sometimes today, parents have been discouraged in their efforts to obtain accommodations or help for the children's disabilities since they "did not qualify."

Sometimes the failure is due to the lack of a proper and timely diagnosis. School budgets often do not allow for sufficient evaluative services by qualified school psychologists, speech and language therapists, or occupational therapists. This often results in children with less severe disability not being assessed until their difficulties have led to academic failure. Children often suffer attention difficulties, memory difficulties, motor-coordination difficulties and developmental language disorders which may go undetected.

At other times the message that the child "does not qualify" comes from a lack of understanding of provisions of Section 504 of the Rehabilitation Act of 1973. This lack of understanding often places parents and schools in conflict and jeopardizes a positive school experience for the struggling child. The area of disability case law, which is based upon decisions and interpretations of the law that have been upheld under the scrutiny of the courts, is a rapidly developing area of law.

Children and Adults with Attention Deficit Disorder (CHADD) has been amongst a group of organizations which have utilized section 504 to provide advocacy for children's needs in the

classroom. Since Attention Deficit Disorders (ADD or ADHD) is a common disorder which has often resulted in controversy and misunderstanding, parents have often found protection for their children under a section 504 plan.

The statement that a child “does not qualify” usually refers to the child not suffering from a condition that has been specifically listed under certain Federal laws that have guided most school policies until the past several years. Public Law 94-142 passed in 1975, since renamed the “Individuals with Disabilities Education Act” (IDEA) mandated a free and appropriate education which is designed to meet the needs of children with disabilities, the right to a comprehensive multi-disciplinary assessment, an IEP plan, the availability of a continuum of special education services appropriate to disabled children’s specific learning needs, and procedural safeguards.

A joint Memorandum from the US Department of Education (DOE) and the Office of Civil Rights addressed the issue of eligibility of students with Attention-deficit Hyperactivity Disorder (ADHD) prompting a document titled “Meeting the Needs of Student” by the Florida Department of education in 1992 (available from Florida DOE, Equal Opportunity Programs, 1020 Florida Education Ctr., Tallahassee, FL 32399-0400).

The document affirms that both IDEA and 504 provide for a free and appropriate education, require that students with disabilities be educated with non-handicapped children to the maximum extent possible, mandate procedures for identification and location of handicapped children in the jurisdiction, and mandate establishment of evaluation and classification procedures.

Section 504 and IDEA do differ in many ways. While the Federal government provides funding under IDEA no such funding is provided under Section 504. Section 504 is a civil rights statute which all recipients of federal funds must comply with. IDEA is monitored by the U.S. DOE and Section 504 by the Office for Civil Rights.

The most important difference for parents who feel their children have been denied services under IDEA guidelines involving specific disabilities is the difference in the definition of “handicap.” Children qualifying under IDEA must have specific listed disability which results in a need for special education. All children who have a handicap under IDEA have protection of their civil rights under 504. However, Section 504 covers other conditions that “substantially limit a major life activity” such as seeing, speaking, breathing, learning, etc., but does not need to adversely affect a child’s educational performance to apply.

The Florida DOE publication specifically notes that Section 504 would apply to children suffering from disabilities including but not limited to “.orthopaedic, visual, speech, and hearing impairments; cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis; cancer; heart disease; diabetes; mental retardation; emotional illness; ADD, attention-deficit hyperactivity disorder; AIDS; and HIV positive.”

According to the DOE document Section 504 requires “periodic” re-evaluations as to the child

needs as well as before and significant changes in placement such as expulsion, serial suspensions which exceed 10 days in a calendar year, individual expulsions exceeding 7 calendar days, transfer of a student to home instruction, graduation from high school, and significant changes in delivery of education such as changes from a regular classroom to a resource class.

Each county is required to develop a Section 504 plan which outlines how it will identify the children that may require assistance under this plan and the procedures by which it will develop an accommodation plan. A county 504 plan was put into place for Alachua County for the last school year and included participation by members of CHADD of Alachua County and other interested organizations. The county plan should be available through the county School Board or Exceptional Student Education Program.

Failures to appropriately accommodate students can result in grievances under laws governing discrimination and civil rights. Most of these plans specify the right to receive an education in the least restrictive appropriate setting.

The process of identifying needed accommodations for most counties is very similar to plans involving children with emotional handicaps (Emotionally handicapped (EH) or Severely Emotionally Disabled (SED), and Learning Disabilities (LD or SLD Severe Learning Disability).

Children who qualify for accommodations under Section 504 often undergo the process of a school “Staffing” which involves the development of an Individualized Education Plan (IEP) with school personnel, parents, special education teachers, and school counselors or psychologists. An IEP is usually developed by a multi-disciplinary school team and involves specification of problems, goals, accommodations and resources which will be utilized to achieve those goals. Input and consideration of information obtained from sources outside of the school such as the child’s psychologists or physicians are also usually considered. In fact, 504 staffings may include evaluations from outside of the school since the school is not required to make medical or psychological diagnoses outside of IDEA.

Parents have specific rights that are often printed and provided to the parent as part of the IEP plan. These rights are also usually available through the county ESE office.

Parents must remember that careful diagnosis of children with ADHD or other handicaps will often reveal coexisting coordination or learning difficulties that will qualify for funded assistance and additional resources under IDEA. Such assistance from resource classes or instruction, speech and language therapy, and/or occupational therapy is often critical in overcoming hurdles that medication and accommodations will not resolve.

While the protection of 504 and IDEA safeguards are important to remember when “running into a wall” they can make anyone’s head spin. Most teachers are eager to assist a student if they can understand the child’s needs. Unfortunately there are a few teachers who have developed inflexible approaches or who are unwilling to accept the legitimacy of certain disorders despite medical, scientific and legal acceptance. If a teacher appears to be uncooperative ask to speak to

the school principal or contact the county Exceptional Student Education office. The majority of these conflicts can be resolved with patience and persistence. When this fails consultation with an attorney that has familiarity with disability law may be necessary.

It must be remembered that an important resource to your child in school is the practical support of your child's teacher. Meet with the teacher early in the year at a time when the teacher is not being overwhelmed by other conferences to educate the teacher about your child's needs. Ensure that the teacher has read the child's IEP plan or past progress reports. Choose a few critical accommodations to start with based upon things that have worked in the past. Monitor your child's progress and communicate on a regular basis. This will go a long way toward establishing a good working relationship with your child's teacher.

It is often helpful to periodically review your child's progress with professionals that have expertise in your child's areas of disability since a child's abilities and the demands that are placed upon them are both moving targets that change sometimes dramatically from year to year.

Note: The above is intended for educational purposes only and is not intended nor should it be relied upon as a legal opinion or interpretation.