

The Laws That Protect Students with ADHD & LD



From the ADHD Experts at

ADDITUDE

Strategies and Support *for* ADHD & LD

ADDITUDE

Strategies and Support for ADHD & T.D.

A trusted source of advice and information for families touched by attention-deficit disorder—
and a voice of inspiration to help people with ADHD find success at home, at school, and on the job.

ADDitudeMag.com

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The Laws That Protect Students with ADHD & LD

A CLEAR, THOROUGH EXPLANATION OF THE FEDERAL LAWS THAT REQUIRE SCHOOLS TO PROVIDE SPECIAL-EDUCATION SERVICES TO STUDENTS WHO NEED THEM.

BY THE EDITORS OF ADDITUDE
WITH SUSAN YELLIN, ESQ. AND MATTHEW D. COHEN, J.D.

Two federal laws — the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act of 1973 — require public schools to provide free and appropriate educational services to children who qualify for them. State laws can add additional protections for students; they cannot strip away any protections specified in these federal laws.

Individuals with Disabilities Education Act

To qualify under the IDEA, a child must meet the criteria for one of 14 specific disability categories. ADHD is not one of these categories, but a child with attention deficit may be eligible if he or she is also affected by one of the specified conditions, which include learning disabilities and developmental delays, or if he or she qualifies under the IDEA’s “Other Health Impairment” category. A child with ADHD may also qualify under IDEA’s “Other Health Impairment” category. In either case, just having ADHD (or LD) doesn’t guarantee eligibility for special services under IDEA. To qualify, the disorder must substantially affect a student’s ability to learn and function at school.

Children who qualify under IDEA are entitled to special-education services, including individual instruction by educational specialists. Parents, teachers, and other school staff work together to develop an Individualized Education Program (IEP) — a plan for the delivery of

FREE RESOURCE

What Does That Mean?
Glossary of Special Ed
Terms and Acronyms

[http://additu.de/
glossary](http://additu.de/glossary)

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special-education and related services. The IEP describes the child's learning problems, details the services to be provided, sets annual goals, and defines how progress will be measured. By law, parents have the right to ask for changes to the plan. A parent knows her child better than anyone else does; no parent should allow others to discount or minimize the expertise they have.

An IEP's safeguards for kids with disabilities are stronger and more protective than are those under a 504 Plan. This is, in no small part, because schools are legally obligated to adhere to timelines, schedule meetings, and provide information to parents under an IEP.

Section 504

The other federal law providing educational support is Section 504 of the Rehabilitation Act of 1973. It guarantees certain rights to people with disabilities, including access to a free and appropriate education. It is a civil rights statute. If ADHD symptoms “substantially limit” a child's ability to learn, he or she is entitled to Section 504 services. Many children who don't meet the criteria for an IEP will qualify for a 504 Plan. One advantage of Section 504 is that parents can file complaints directly with the Office for Civil Rights of the U.S. Department of Education.

Usually, services included in a 504 Plan include classroom accommodations — like extra time to complete assignments. But the plan may also outline the use of assistive technology, such as computer-aided instruction, and access to therapy. There are no legal requirements stipulating what a 504 Plan should include, and the school isn't required to involve parents in the process (although many schools do).

I believe my child needs an IEP or 504 Plan. How should I start the process?

If your child is struggling academically, start by documenting his or her difficulties in school by keeping teachers' notes, test scores, and report cards in one file that you can bring to doctors' appointments or to meetings with the school.

REQUEST A TEACHER MEETING to discuss how your child is behaving in class, and what strategies could help. If the teacher's point of view confirms your suspicions, it's time to pursue an evaluation and diagnosis.

SEND A FORMAL REQUEST TO THE PRINCIPAL and district head of special education via certified mail, or hand-deliver it and request a receipt. Include any documentation you've compiled, and ask for an evaluation for learning disabilities or social/behavioral challenges, if needed.

DEAR ADDITUDE:

How do I set up the IEP/504 Plan my child needs to thrive?

<http://additu.de/da-504>

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A parent need not choose between an IEP or 504 Plan yet. The school will determine which best fits your child’s needs after the evaluation.

IF THE SCHOOL REFUSES AN EVALUATION, you may challenge the decision by requesting an “independent evaluation at the public expense,” with the help of an attorney or special advocate.

Who should pay for an evaluation — the school or the parents?

Federal laws require schools to provide Free and Appropriate Public Education (FAPE). In other words, public schools receiving federal funding are required to pay for any evaluations that are needed to diagnose a health impairment like ADHD that could qualify a child for special services — even those evaluations conducted by an outside physician if the school lacks a qualified staff member.

A parent can choose to pay for a physician’s evaluation, and the school is obligated to consider it, but it is not bound by the conclusion of any outside evaluator.

Once an evaluation is requested, how much time does the school district have to perform it?

Each state has distinct guidelines regarding the amount of time that may lapse between an evaluation request, a meeting with parents to obtain consent, and the actual evaluation. Consult the laws on your state’s Department of Education web site, usually in the special education section.

Are private schools required to provide accommodations in the same way that public schools are?

Private schools are not required to provide the same accommodations as public schools because they generally do not receive federal funding.

Public schools that receive federal funding are required to evaluate children suspected of having health impairments or disabilities under the “child find” provision of IDEA and Section 504. Religiously affiliated schools are exempt.

A parent can request an IEP/504 evaluation from the public school in his or her district — even if the child to be evaluated attends a private school. If special-education services are needed, the parents can choose to move the child to a public school, or request equitable services — accommodations or therapies paid for by federal funding. However, these services are more limited and are not bound by strict federal guidelines for IEPs, teacher qualifications, or accountability.

WEBINAR REPLAY

Learning Strategies for
ADHD and Dyslexia

<http://additu.de/adhdld>

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We homeschool. Are we entitled to any services for our child with ADHD?

Homeschoolers are not covered by IDEA or Section 504. That said, both homeschoolers and private schools may adhere to a provision that says a child who is voluntarily removed from public school to be educated elsewhere is entitled to an “individual service plan.” This means the local public school system is responsible for evaluating the child, and can offer services if it has the budget to do so.

However, these services are different from an IEP, and there are no due process rights. The district’s service offerings are typically very limited, but you may be able to get speech therapy, or learning disability resource time. This is optional on the part of the public school, not mandatory.

If the IEP team decides my son doesn’t need services, can I challenge that ruling?

When the school decides against services for a student, his or her parents should ask for a copy of the assessment and documentation explaining why the student is ineligible. If the parents disagree, they are entitled to request an independent educational evaluation (IEE) to be completed by a qualified professional outside of the school system to challenge the decision.

To request an IEE, a parent should submit a letter to the IEP/504 team that denied services. The school can accept and pay for the request, or can file for a due process hearing if it does not believe an IEE is necessary. Within a set amount of time, the parent will receive notice of the hearing that includes the name and address of the student and school, plus a description of the request for the hearing, and the proposed resolution.

Then, a resolution session is held to try to mediate between parents and district officials. At this session, the school can agree to change its assessment and grant IEP/504 services. If an agreement is not reached, the due process hearing proceeds. Parents have the right to have an IEE completed privately, to request that the IEP/504 team review the results, and to appeal the decision of the hearing if it is not in their favor.

The school did not give me the IEP. Isn’t it my right to have a copy of it?

A parent has the right to receive a copy of his or her child’s IEP, and the IEP must be made accessible to each teacher working with the child.

FREE RESOURCE

When Traditional Schools Fail Your Child

<http://additu.de/homeschool>

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Can a student have an IEP and a 504 Plan at the same time?

A student *can* have an IEP and a 504 Plan at the same time, but generally both are not needed. If a child qualifies for an IEP, it should cover any academic interventions and other disability-related needs that would be addressed by a 504 Plan. Having two documents creates unnecessary paperwork and confusion.

Children who do not qualify for an IEP may be offered a 504 Plan, which offers fewer rights and protections for parents. Every student who is entitled to an IEP under IDEA is also entitled to a 504 Plan, but not vice versa.

My child has behavior and/or social problems, not academic ones. Is he eligible for special assistance?

An evaluation for an IEP or 504 plan must cover all suspected areas of disability – not just in the realm of academics. This includes the following:

- Behavioral problems: aggression, acting out in class
- Organizational issues: trouble getting to class on time, completing homework, or waiting to be called on in class
- Social problems: limited friendships, transient friendships, difficulty making friendships

These can be addressed as a school-related educational issue under IDEA and Section 504 using accommodations to alleviate behavior/social problems and special services including social work, psychology, and counseling services.

If your child is being bullied based on a disability, that bullying can be considered a denial of the free appropriate public education to which your child is entitled, or a violation of the Americans with Disabilities Act.

My child's school is asking us to put him on medication. Can the school require a specific treatment?

Schools cannot require families to put kids on medication, or to take kids off of medication. They cannot recommend medication as part of the plan for dealing with a child's disability. The school is obligated to help the child regardless of whether he is medicated. Service and accommodations are not dependent on taking medication.

QUIZ

How well do you know special-ed law?

<http://additu.de/spedlaw>

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Where can I find written criteria for receiving an IEP or a 504 Plan?

ADDitudemag.com offers a wealth of resources outlining the IEP/504 process from start to finish, and providing sample documentation.

- [12 Steps to Smarter School Accommodations](#)
- [Your Legal Rights at School](#)
- [Everything You Need to Know About Creating an IEP or 504 Plan](#)
- [IEP vs. 504: What's the Difference?](#)
- [Sample Letter Requesting an IEP/504 Evaluation](#)
- [A Back-to-School Checkup for Your Child's IEP/504 Plan](#)
- [Best Resources for School Help & Accommodations](#)

Visit [The Yellin Center](#), and use the search feature to locate the topic that best fits your questions. Read [**A Guide to Special Education Advocacy: What Parents, Clinicians, and Advocates Need to Know**](#), by Matt Cohen, published in 2009 by Jessica Kingsley Press. Visit [WrightsLaw](#) and review its downloadable booklets.

Visit the Department of Education website for your state, and view the special education section. Review the federal government's U.S. Department of Education Office of Special Ed Programs website to learn about federal IDEA regulations. Review the Federal Office for Civil Rights website to review 504 regulations.

REAL LIFE STORY

"Coming into My Own as My Child's Advocate"

<http://additu.de/advocate>

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ADDitude eBooks Available Now

additudemag.com/shop

A Parent's Guide to ADHD as School

Start the school year off right with expert tips and information for helping your child with ADHD or learning disabilities succeed at school

You're always trying new ways to help your child focus on lessons, adhere to classroom rules, and turn in his homework on time. You want support strategies that will nurture his strengths — and push him to meet the challenges each new school year brings. This nine-part guide is an essential resource. Use it to help your child achieve academic and social success this school year.

>> Learn more about this eBook: <http://additu.de/schoolbook>

A Parent's Guide to Effective ADHD Discipline

A better-behavior plan for the most oppositional, defiant children

Nothing works. You take away electronics or special activities, and he couldn't care less. You try rewards, points, praise, consequences — nothing turns around his behavior. He shows no remorse, and you feel like a failed parent. Sound familiar? This 32-page eBook, filled with expert tips and solutions is a game-changer.

>> Learn more about this eBook: <http://additu.de/disciplinebook>

The Complete IEP/504 Guide

A step-by-step road map to the school accommodations that your child needs to succeed

This eBook is your guide to securing school accommodations for your child with ADHD and/or LD. Learn how to secure a correct diagnosis for your child, navigate the IEP or 504 process, draft an IEP or 504 plan that will help your child succeed in school, track progress against goals, and learn about your rights as a parent, plus how to respond if the IEP isn't followed.

>> Learn more about this eBook: <http://additu.de/iep-504-ebook>

FREE ADDitude Downloads

40 Accommodations for Children with ADHD/LD

You can increase the odds of your child succeeding in school by zeroing in on his problems in the classroom and including these proven accommodations in his IEP or 504 Plan.

50 Smart Discipline Tips for Kids with ADHD

The best techniques from parenting experts for dealing with dishonesty, getting your child to take you seriously, and much more!

A Routine That Works

Customize this hour-by-hour routine for your child — and make your day less stressful.

13 Parenting Strategies for Challenging Kids

What does it take to be a great parent to your child with ADHD? Here's what works, and why.

How to Create and Main- tain Your Child's IEP

Find out how to craft a winning IEP for your child along with specific accommodations to include that address common school-related challenges for students with ADHD.

Homework Help for Stu- dents with ADHD

Addressing homework problems is critical — here's how to do it.

IEP vs. 504: What's the Dif- ference?

Use this comparison chart to assess which option is best for your child, understand your legal rights, and research school accommodations that work

**Find these and many
more free ADHD
resources online at:**
[http://additu.de/
freedownloads](http://additu.de/freedownloads)

ADHD Webinar Replays from *ADDitude*:

How to Fight for Your Child's Rights – and Happiness

>> <http://additu.de/rights>

Do you know your child's legal rights at school? And how to fight for them? Do you know how to get your pediatrician to address your child's needs and challenges? Do you know what to do when your concerns are not being taken seriously? In this webinar, mom and ADHD expert Penny Williams explains how to start advocating for your child.

Comeback Kids: Building Resilience in Students with ADHD

>> <http://additu.de/resilience>

Students diagnosed with ADHD hear a disproportionate number of negative messages throughout their school days: "Don't blurt out the answer!" "Stay seated!" "Are you even listening?" All of this correction has an understandable impact on self-esteem which, in turn, shuts down our kids' initiative and confidence. But every good teacher knows that real learning requires taking risks, as well as bouncing back from experiences that didn't end up as we'd hoped. In this webinar, Anna Vagin, Ph.D. explains how to build the resilience that is essential to your child's success at school.

Lessons Learned — and Shared — by Homeschool Families That Help All Students

>> <http://additu.de/homesc>

The notion of homeschooling your child is equal parts enticing and overwhelming. The investments of time and money, potential for social isolation, and family-dynamic considerations are all intimidating. Yet many parents find that a customized homeschool education can nurture a child's strengths, improve his academic performance, boost his self-esteem, and reduce family stress. In this webinar, Kathy Kuhl explains how homeschooling practices can help any child conquer his work, and how to customize an education plan.

Learning Strategies for ADHD and Dyslexia

>> <http://additu.de/adhdld>

Almost half of people with ADHD also have a learning disability, and the most common among them is dyslexia. Many times dyslexia is not identified because reading challenges are commonly attributed to ADHD. Knowing the genetic, biological, and neuropsychological similarities and differences between these two conditions is essential in assuring a proper assessment. In this webinar, Roberto Olivardia, Ph.D. discusses strategic treatment interventions and academic accommodations can turn things around for a child with dyslexia and ADHD.

FREE ADHD Newsletters from *ADDitude*

Sign up to receive critical news and information about ADHD diagnosis and treatment, success at school, adult ADHD, and parenting strategies:
<http://additu.de/newsletter>

Adult ADHD and LD (weekly)

Expert advice on managing your household, time, money, career, and relationships

Parenting ADHD and LD Children (weekly)

Strategies and support for parents on behavior and discipline, time management, disorganization, and making friends.

ADHD and LD at School (bimonthly; weekly from August through October)

How to get classroom accommodations, finish homework, work with teachers, find the right schools, and much more.

Treating ADHD (weekly)

Treatment options for attention deficit including medications, food, supplements, brain training, mindfulness and other alternative therapies.