

August 15, 2016



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Office for Civil Rights Issues New Dear Colleague Letter Regarding ADHD

The Office for Civil Rights (OCR) issued another Dear Colleague Letter (DCL) on July 26, 2016 regarding the obligation of school districts to students with Attention Deficit Hyperactivity Disorder (ADHD) under Section 504 of the Rehabilitation Act of 1973 (Section 504). How's that for a lot of acronyms in one sentence?

This DCL is notable for its inclusion of a 32-page Guide ([Students with ADHD and Section 504: A Resource Guide](http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201607-504-adhd.pdf)) [<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201607-504-adhd.pdf>] reviewing step-by-step how school districts should identify, evaluate, and make program and placement determinations for students with ADHD. The DCL emphasizes the disproportionately large number of complaints OCR has received over the past five years involving allegations of discrimination against students with ADHD. Within those complaints, OCR's primary areas of continuing concern are:

- Failure of students to be referred for evaluation,
- Failure to evaluate or evaluate adequately,
- Inappropriate decisions about the aids, services and settings required to appropriately educate the student,
- Failure to educate staff about the student's needs, and
- Inappropriate consideration of administrative and financial burdens in selecting and providing appropriate aids and services to identified students.

Thus, the DCL and its accompanying Guide provide specific reminders and instruction on how districts should proceed through the 504 process, particularly for students with ADHD, although the procedures set forth are applicable to students with other disabilities as well. OCR makes clear in the Guide that in its investigations, it presumes that a student with a diagnosis of ADHD is substantially limited in one or more major life activities and thus qualified as a student with a disability entitled to protection under Section 504. OCR emphasizes particular procedural points and frequent downfalls by districts in their handling of students with ADHD. While we recommend a thorough review of this Guide, here are some key points to remember:

- Teachers and appropriate staff must be aware of and have access to a student's 504 plan. Plans should be written with enough specificity to so that teachers are clear about, and the parties can agree on, what the plan requires.
- Do not rely upon a student's grades to determine that a student does not qualify for accommodations under Section 504.



- If a district has any reason to suspect that a student has a disability, it should not insist on first implementing tiered interventions before conducting an evaluation. Intervention and evaluation can be done concurrently.
- The definition of disability should be broadly construed and the determination of whether an individual has a disability should not demand extensive analysis.
- A district cannot consider any ameliorative effects of medication, or any other mitigating measure, when evaluating whether a student is substantially limited in a major life activity.
- Districts cannot require that a parent provide certain data or information, including a medical assessment, before conducting an evaluation.
- If a student has a disability, but does not require any accommodations or services, the student is still a person with a disability protected under Section 504.
- An identified Section 504 student must be provided with individual supports appropriate to their needs regardless of cost or administrative burden.
- Section 504 due process procedures must be in place and directly communicated to parents with timely notice.

Both the DCL and the Guide are available at <http://www.ed.gov/ocr>.

Questions or Assistance:

If you have any questions regarding the July 26th “Dear Colleague” letter, please contact Alyce Alfano at (860) 251-5663 or aalfano@goodwin.com or Benjamin FrazziniKendrick at (860) 251-5182 or bfrazzinikendrick@goodwin.com.

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