

July 29, 2016

***new ocr section 504 guidance for students with adhd***

On July 26, 2016, the U.S. Department of Education’s (ED) Office for Civil Rights (OCR) has issued [guidance](http://schoolslegalservice.org/wp-content/uploads/sites/15/2016/07/OCR-Section-504-Guidance-for-Students-With-ADHD-July-2016.pdf) clarifying the obligation of schools to provide students who have been diagnosed with attention-deficit/hyperactivity disorder (ADHD) with equal educational opportunities under Section 504 of the Rehabilitation Act of 1973.

This new guidance provides a broad overview of Section 504 and school districts’ obligations to provide educational services to students with disabilities, including substantially expanded obligations imposed on school districts in accommodating students with ADHD.

Of substantial note is that OCR is taking the position that OCR will now presume every student diagnosed with ADHD is disabled under the standard set forth in Section 504 unless there is evidence to the contrary[[1]](#footnote-1). Additionally, in assessing students with ADHD, districts may now have to examine how the disability impacts a student’s home life irrespective of academic performance at school.[[2]](#footnote-2)

This new guidance also:

! Explains that schools must evaluate a student when a student needs, or is believed to need, special education or related services.

! Discusses the obligation to provide services based on students’ specific needs and not based on generalizations about disabilities, or ADHD, in particular. For example, the guidance makes clear that schools must not rely on the generalization that students who perform well academically cannot also be substantially limited in major life activities, such as reading, learning, writing and thinking; and that such a student can, in fact, be a person with a disability.

! Clarifies those students who experience behavioral challenges, or present as unfocused or distractible, could have ADHD and may need an evaluation to determine their educational needs.

! Reminds schools that they must provide parents and guardians with due process and allow them to appeal decisions regarding the identification, evaluation, or educational placement of students with disabilities, including students with ADHD.

Schools Legal Service will be discussing some of the initial implications of this OCR guidance during its upcoming August Workshop and will additionally be discussing the legal implications of the new OCR guidance at upcoming workshops.

If you need any further assistance or advice, please feel free to contact our office.

*— Darren J. Bogié*

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*Education Law Updates are intended to alert clients to developments in legislation, opinions of courts and administrative bodies and related matters. They are not intended as legal advice in any specific situation. Please consult legal counsel as to how the issue presented may affect your particular circumstances.*

1. U.S. Department of Education, Office for Civil Rights, Students with ADHD and Section 504: A Resource Guide, July 2016, page 10. (Posted on SLS Website.) [↑](#footnote-ref-1)
2. *Supra*, page 12. [↑](#footnote-ref-2)