**United States Department of Education
Washington, DC 20202**

**Memorandum**

**FROM : Jeanette J. Lim, Acting Assistant Secretary for Civil Rights**

**SUBJECT: Clarification of School Districts' Responsibilities to Evaluate Children with Attention Deficit Disorders (ADD)**

Under Section 504, if parents believe their child has a disability, whether by ADD or any other impairment, and the LEA has reason to believe the child needs special education or related services, the LEA must evaluate the child to determine whether he or she is disabled as defined by Section 504. If the LEA does not believe that the child needs special education or related services, and thus refuses to evaluate the child, the LEA must notify the parents of their due process rights.

This memorandum is intended to clarify the responsibility of LEAs to evaluate children suspected of having ADD, based on parental request.

**OCR Facts: Section 504 Coverage of Children with ADD**

**QUESTION**: What is ADD?

**ANSWER**: Attention Deficit Disorder (ADD) is a term used to describe a chronic behavioral disorder in children who are inattentive, easily distracted, and impulsive. This kind of behavior is usually matched with certain other criteria, such as hyperactivity, before a child is diagnosed as having ADD. Symptoms of ADD may be manifested differently depending on the particular subtype of the disorder and its severity. For example, with Attention Deficit Hyperactive Disorder (ADHD), hyperactivity is the primary characteristic. In this fact sheet, the term ADD is being used to refer to any form of the disorder.

**QUESTION:** Are all children with ADD automatically protected under Section 504?

**ANSWER**: No. Some children with ADD may have a disability within the meaning of Section 504; others may not. Children must meet the Section 504 definition of disability to be protected under the regulation. Under Section 504, a "person with disabilities" is defined as any person who has a physical or mental impairment which substantially limits a major life activity (e.g., learning). Thus, depending on the severity of their condition, children with ADD may or may not fit within that definition.

**QUESTION**: Must children thought to have ADD be evaluated by school districts?

**ANSWER**: Yes. If parents believe that their child has a disability, whether by ADD or any other impairment, and the school district has reason to believe that the child may need special education or related services, the school district must evaluate the child. If the school district does not believe the child needs special education or related services, and thus does not evaluate the child, the school district must notify the parents of their due process rights.

**QUESTION**: Must school districts have a different evaluation process for Section 504 and the IDEA?

**ANSWER**: No. School districts may use the same process for evaluating the needs of students under Section 504 that they use for implementing IDEA.

**QUESTION**: Can school districts have a different evaluation process for Section 504?

**ANSWER**: Yes. School districts may have a separate process for evaluating the needs of students under Section 504. However, they must follow the requirements for evaluation specified in the Section 504 regulation.

**QUESTION**: Is a child with ADD, who has a disability within the meaning of Section 504 but not under the IDEA, entitled to receive special education services?

**ANSWER**: Yes. If a child with ADD is found to have a disability within the meaning of Section 504, he or she is entitled to receive any special education services the placement team decides are necessary.

**QUESTION**: Can a school district refuse to provide special education services to a child with ADD because he or she does not meet the eligibility criteria under the IDEA?

**ANSWER**: No.

**QUESTION**: Can a child with ADD, who is protected under Section 504, receive related aids and services in the regular educational setting?

**ANSWER**: Yes. Should it be determined that a child with ADD has a disability within the meaning of Section 504 and needs only adjustments in the regular classroom, rather than special education, those adjustments are required by Section 504.

**QUESTION**: Can parents request a due process hearing if a school district refuses to evaluate their child for ADD?

**ANSWER**: Yes. In fact, parents may request a due process hearing to challenge any actions regarding the identification, evaluation, or educational placement of their child with a disability, whom they believe needs special education or related services.

**QUESTION**: Must a school district have a separate hearing procedure for Section 504 and the IDEA?

**ANSWER**: No. School districts may use the same procedures for resolving disputes under both Section 504 and the IDEA. In fact, many local school districts and some state education agencies are conserving time and resources by using the same due process procedures. However, education agencies should ensure that hearing officers are knowledgeable about the requirements of Section 504.

**QUESTION**: Can school districts use separate due process procedures for Section 504?

**ANSWER**: Yes. School districts may have a separate system of procedural safeguards in place to resolve Section 504 disputes. However, these procedures must follow the requirements of the Section 504 regulation.

**QUESTION**: What should parents do if the state hearing process does not include Section 504?

**ANSWER**: Under Section 504, school districts are required to provide procedural safeguards and inform parents of these procedures. Thus, school districts are responsible for providing a Section 504 hearing even if the State process does not include it.

Source: NICHCY, [National Clearinghouse](http://www.nichcy.org/pubs/otherpub/doeadd2.htm)