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U.S. DEPARTMENT OF EDUCATION OFFICE OF CIVIL RIGHTS GUIDANCE TO SCHOOL DISTRICTS FOR STUDENTS WITH ADHD

In July 2016 the Office of Civil Rights (OCR) issued an advisory *Dear Colleague* letter along with a *Resource Guide* for students with ADHD. OCR explained that between 2011 and 2015, OCR received over 16,000 complaints alleging disability-based discrimination in the nation's elementary and secondary school programs. One in nine, or about 2,000 of the complaints concerned students with ADHD.

In its *Dear Colleague* letter and *Resource Guide* OCR stressed that Section 504, like the Individuals with Disabilities Education Act (IDEA) includes the requirement that public schools must locate, identify and evaluate children who are suspected of having a disability. This mandate is known as the "child find" requirement and is applicable to the IDEA and to Section 504. In addition, Section 504 regulations require public elementary and secondary schools to provide a free and appropriate public education (FAPE), which is also a requirement under the IDEA. OCR's *Resource Guide* reinforced the general understanding that implementing an IEP for an eligible child under the IDEA is one way to also satisfy the FAPE requirement under Section 504. The *Resource Guide* also points out that a "Section 504 Plan" which sets forth the components of a FAPE for a Section 504-eligible child is not a explicit requirement under Section 504. However, public schools in Pennsylvania must be aware that Pennsylvania's state regulations implementing Section 504, do require a written Service Agreement. 22 Pa. Code Sec. 15.7.

OCR's guidance for Section 504 and students with ADHD reminds districts that Section 504's child find requirement includes an evaluation of the student suspected of having a disability. Although Section 504 requires an individualized evaluation for students suspected of having a disability, it does not mandate a particular evaluation process or report. Districts are reminded that evaluations conducted to determine IDEA eligibility can and should serve as evaluations to consider Section 504 eligibility as well. OCR cautioned that districts cannot require parents to obtain medical evaluations or medical prescriptions in order to develop a Section 504 plan or service agreement.

In many of OCR's investigation of complaints, they found that some districts inappropriately concluded that students were ineligible for Section 504 plans because they were obtaining average or better-than-average grades in their academic subjects. OCR reminded districts that when evaluating students suspected of having ADHD, districts must look beyond academic grades and consider whether students are demonstrating functional, behavioral, social or emotional impairments as well.

Similar to the requirements of the IDEA, OCR informed districts that districts cannot allow intervention strategies and processes to interfere with or to otherwise deny an evaluation to a child suspected of having a disability. OCR made clear that it supports response to intervention and multi-tiered systems of support, but some districts got into trouble by: 1) having a rigid system which required the implementation of interventions prior to conducting an evaluation; 2) requiring students to progress through intervention tier levels prior to initiating an evaluation; or, 3) requiring that data from an intervention strategy must be collected as a necessary component of an evaluation.

In designing a Section 504 plan, or in Pennsylvania, a Service Agreement, OCR reminds districts that the plan or agreement should be individualized to the demonstrated needs of the child. The plan should not consist of a laundry list of symptoms or strategies typically associated with children with ADHD. OCR also cautions that parents must be provided with information concerning their rights and the procedural safeguards under Section 504.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.

SOUTHEAST REGION OFFICE

331 East Butler Avenue, New Britain, PA 18901
PHONE 215 345 9111 | FAX 215 348 1147

CENTRAL REGION OFFICE

P.O. Box 956, Hershey, PA 17033
PHONE 717 641 9025 | FAX 717 641 9026

NORTHEAST REGION OFFICE

2 South Main Street, Suite 303, Pittston, PA 18640
PHONE 570 654 2210 | FAX 570 655 1875