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## **Module 14: ADHD and Education/The Law and ADHD**

In this module, we will take a look at the educational laws and practices that may apply to a child with ADHD.

This module is designed to give you a general working knowledge of these laws and practices so that you can fully participate in your child's educational planning. How the law applies to your child depends on your particular location and the laws of that area. If you need specific interpretation or support, always seek the advice of a legal expert.

- 14.1 What laws are in place to help children with ADHD in the US, Canada, UK and Australia?
- 14.2 Using the law to ensure your children's educational rights
- 14.3 Understanding what 'reasonable adjustments' means
- 14.4 Benefits of inclusion classrooms to meet the needs of students with ADHD

### **Module 14.1 What laws are in place to help children with ADHD in the US, Canada, UK and Australia?**

When you have a child with ADHD or any other special need, it is important to understand the rights your child has under the law. As you navigate the educational system, you will encounter policies and practices that are integral to constructing your child's individual education plan. Knowledge is key. Understanding these policies allows you to fully participate in the process and be an advocate for your child.

Being an advocate does not mean getting a lawyer and filing a lawsuit. What being an advocate means is understanding your child's educational rights and being proactive in working with the educational team to develop the *best plan* for your child.

When you have a team working together and in the best interest of the child, it is the child who benefits.



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So what exactly does the law say about special education? That depends on where you are. You have to find out what the laws are for your area. Special education laws vary from country to country. There may even be differences between states/provinces or local educational systems.

Let's look at some examples of educational laws and governing acts.

### **UNITED STATES (U.S.)**

In the United States, educational laws and mandates are overseen at the Cabinet (federal) level by the U.S. Department of Education. Within that department is the Office of Special Education Programs (OSEP).

The primary role of the U.S. Department of Education is to:

1. Establish policies related to federal education funding, administer distribution of funds and monitor their use
2. Collect data and oversee research on America's schools
3. Identify issues in education and focus national attention on them
4. Enforce federal laws prohibiting discrimination in programs that receive federal funds

Each state has a department of education structure that oversees education at the state level. They work with individual school districts and school boards to ensure that students are being served in accordance with federal standards. The establishment of schools and specific practices are determined largely at the state and local levels.

In this section, we'll look at the major laws and policies that influence how services are to be provided.

### *FAPE (Fair Appropriate Public Education)*

In the United States, every child is entitled to a free appropriate public education, often referred to as FAPE. What FAPE means is that every child, regardless of the type of disability, is entitled to receive the same education as a child without a disability.

The child's education is to be provided in the least restrictive environment (LRE) possible. LRE means the child with special needs is placed in a regular education classroom setting with peers both with and without disabilities to the maximum extent



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possible. Public schools that receive federal funding must place a child with special needs in a regular education classroom unless it is determined and demonstrated by the child that the student's needs cannot be met in that setting even with educational supports and services.



FAPE also extends to non-academic activities such as meals, recess, pull-out activities and PE. Children with special needs are to be included with their regular education peers to the maximum extent possible with respect to their individual needs.

In the 2017 case of *Endrew F. v. Douglas County School District Re-1*, the United States Supreme court determined that to meet its obligations under the IDEA (Individuals with Disabilities Education Act), a school must offer an IEP (individual education plan) that allows a child to make progress given the child's special needs and not just provide for minimal education. The Court reinforced the requirement that "every child should have the chance to meet challenging objectives."

Two of the most significant educational acts that impact special education services and FAPE are IDEA (Individuals with Disabilities Education Act) and Section 504 (Section 504 of the Rehabilitation Act of 1973, often referred to as just 504).

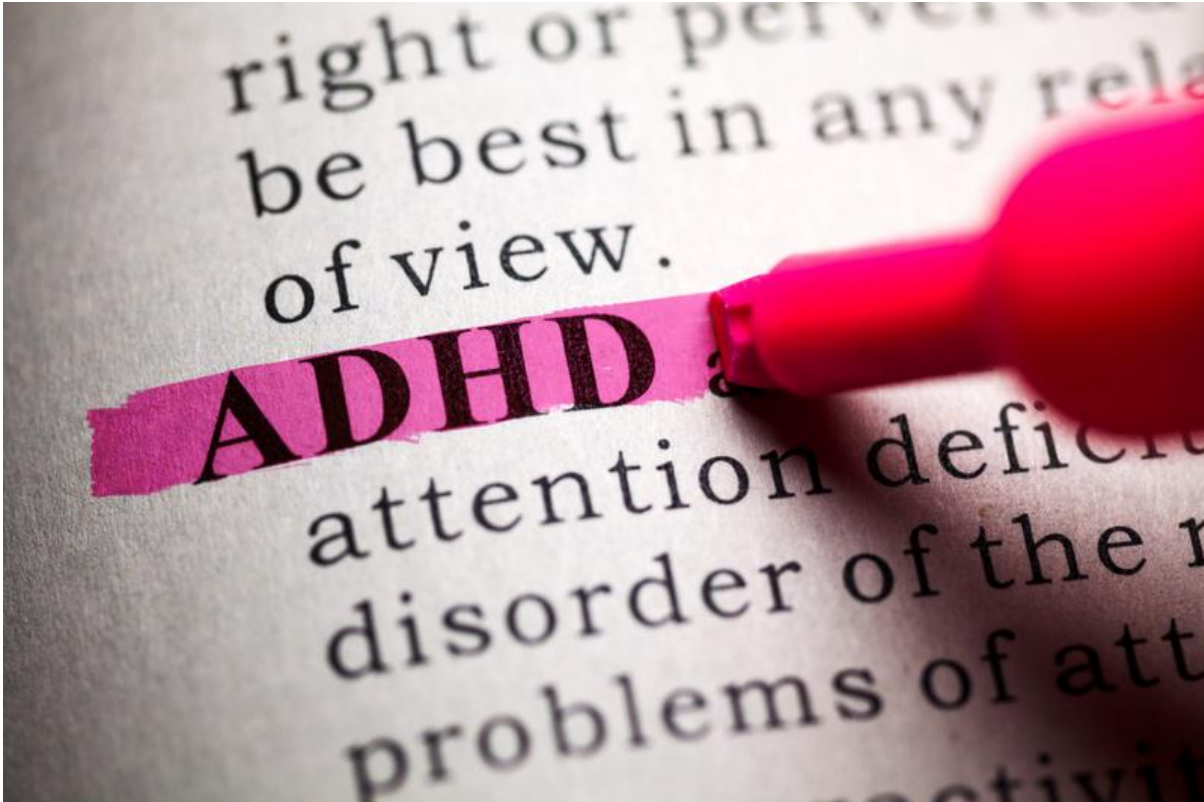
Section 504



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Section 504 is part of federal civil rights law that forbids schools from discriminating against children with disabilities. It mandates every public school to provide every eligible child with a free appropriate public education. Any school that receives federal education funds must provide every eligible child with a disability equal opportunity to participate in all academic and non-academic activities that are available at their school. 504 also requires that schools provide students with disabilities reasonable accommodations based on their individual needs.

To be eligible for services under 504, a child must have a condition that significantly limits a “major life activity.” These activities may include learning, walking or speech. Other major life activities as identified by the Americans with Disabilities Act Amendments Act (ADAAA) include deficits in concentration, communication and cognition.

IDEA

IDEA works in tandem with 504. IDEA is a grant statute that requires states who receive funds to adhere strictly to all special education requirements. IDEA covers



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eligible students from birth to high school graduation or age 21 (whichever comes first). It provides for early childhood intervention programs up to age 3 and services for school-age children.

IDEA also specifies the disabilities for which a child may be eligible for special education services. However, just having a disability does not automatically qualify a child for services. The child must have one of the eligible disabilities AND require special education services in order to progress in school.

Under IDEA, parents have the right participate in the development of their child's educational plan and the decisions the school makes regarding your child. Parents have rights and protections throughout the process. These rights and protections are known as procedural safeguards.

To learn more, visit the U.S. Department of Education website at:

<https://www2.ed.gov/policy/landing.jhtml?src=pr>

### CANADA

In Canada, there is no federal government controlled or funded state school system. Instead, public schools are the responsibility of the individual provinces and territories. The federal government works with the provinces but educational services are administered almost exclusively at the provincial level. Each province sets its own programs and guidelines for special needs services.



In Canada, the *Canadian Charter of Rights and Freedoms* ensures the rights of citizens including the right to equal protection and benefit before and under the law without discrimination (Section 15). This protection was further solidified with



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Canada's ratification of the United Nation's *Convention on the Rights of the Child* in 1991. All children in Canada have a right to a free public education. By law, all state schools are required to have special education services. However, what that entails and what each school is able to provide will vary by province.



Special education services can be provided for exceptionalities including:

- Physical disabilities
- Psychological or emotional disorders
- Behavioral disorders
- Cognitive impairments
- Speech and language disorders

Most provinces and territories have an education act of some type that outlines their specific special education policies. Special needs programs generally some combination of accommodations, modifications, mainstreaming and an individualized education plan. Because each area administers its own special education policy, access, design and implementation may vary greatly.

To fully understand the special education laws in Canada as they apply to your child, it is best to contact the education service for your province or territory.

Here are some links to specific provinces and territories to learn more:

Ontario <http://www.edu.gov.on.ca/eng/general/elemsec/speced/ontario.html>





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British Columbia

<https://www2.gov.bc.ca/gov/content/education-training/k-12/teach/teaching-tools/inclusive-education>

Alberta <https://education.alberta.ca/>

Nova Scotia <https://www.ednet.ns.ca/>

Quebec <https://www.cqsb.qc.ca/en/committees/special-needs-committee>

United Kingdom (UK)

In the UK, individuals with special needs are protected under the 1995 Disability Discrimination Act (DDA). This act specifies a disability as:

- The presence of a physical or mental impairment
- The impairment negatively affects your ability to carry out normal everyday tasks
- The impairment has an adverse effect on your ability to carry out normal everyday tasks

Types of disabilities that are eligible for services include:

- Speech, language and communication disorders or impairments
- Cognitive and learning difficulties
- Social, emotional and mental health disorders or difficulties
- Physical disabilities
- Vision, hearing or multi-sensory impairments



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Schools cannot discriminate against students with disabilities. Schools are required to make reasonable adjustments to ensure that the student is not disadvantaged and has access to the same education as that of non-disabled students.

In the UK, education for children with special needs is often referred to as Special Education Needs (SEN). Because each of the countries of the UK have separate governments, SEN policies and services are determined and managed by each individual country.

While each country has its own laws and processes, they do have some things in common :

- They all have some formal act or mandate that provides for the education of children with special needs
- Most services are provided via mainstreaming to the extent appropriate





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- All schools are legally mandated to have a SEN coordinator or similar position
- A SEN Code of Practice, updated in 2014, provides legally-binding guidance on how services should be provided

To learn more about specific special education policies and services in each country:

Wales

<http://gov.wales/topics/educationandskills/schoolshome/additional-learning-special-educational-needs/special-educational-needs/?lang=en>

England <https://www.gov.uk/children-with-special-educational-needs>

Scotland <https://education.gov.scot/>

Northern Ireland <https://www.education-ni.gov.uk/>



AUSTRALIA



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In 1990, Australia ratified the United Nations Convention on the Rights of the Child (the Convention). The Convention requires Australia to recognize the right of every child under the age of 18 to an education. Primary school is compulsory and free. Government-funded education is the responsibility of State and Territory governments. As such, policies and services for special needs are set by each entity.

Australia recognizes children with special needs as those who have a disability, a health-related condition or learning problems.

Disabilities may include:

- physical or intellectual disabilities
- hearing or vision impairment
- speech and language disorders
- mental/emotional disorders



The Disability Standards for Education of 2005 was enacted to provide children with special needs the same educational rights as regular education students. With the



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goal of inclusion, most of Australia’s special education services are provided via mainstreaming with special support services.

Eligibility is determined via consultation. Determination for need of special education services is made using a set of Disability Criteria. These criteria are established by each state or territory so exact criteria will vary.

For more information about special education services in specific provinces or territories, you can use the links below:

Australian Capital Territory  
[https://www.education.act.gov.au/school\\_education/disability\\_education](https://www.education.act.gov.au/school_education/disability_education)

New South Wales  
<https://education.nsw.gov.au/public-schools/going-to-a-public-school/our-schools-at-a-glance>

Northern Territory <https://education.nt.gov.au/>

Queensland <http://education.qld.gov.au/schools/disability/index.html>

South Australia  
<https://www.decd.sa.gov.au/supporting-students/children-disability-and-special-needs>

Western Australia <http://det.wa.edu.au/ssen/detcms/portal/>

Tasmania <https://www.education.tas.gov.au/>

Victoria <http://www.education.vic.gov.au/childhood/parents/needs/Pages/default.aspx>

### **4.2 Using the law to ensure your children’s educational rights**

When the topic of school services for ADHD comes up, one of the first terms you’ll hear is “special education.” We don’t always think of ADHD and special education going together. You may wonder, “What does that mean? Is my child developmentally delayed?” It’s a common concern.



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The fact is, ADHD and IQ have been found to be completely separate constructs. ADHD does not imply any kind of IQ deficits or developmental delays.

So, what if your child is struggling in school and you think special accommodations could help? Where do you start?

A good starting point is to meet with the teacher. Ask who the special education coordinator is for the school. Schedule a meeting with that person to discuss the steps you will need to take.

Quick Fact      *ADHD occurs in children across the intellectual range. Identifying and managing ADHD in gifted children is particularly challenging.*

Be positive and proactive in your approach. Ideally, you want to build a team that can work together to give your child the best possible outcome.

NOW is the time to start educating yourself about special education law and what your rights and responsibilities are as the parent of a child with special needs.

Don't worry! There are lots of ways to learn:

- Attend PTA or Parent Advisory Committee meetings (the exact name of these will vary)
- Join a local advocacy group (ex., NAMI, CHADD)
- Contact your local department of education and ask about your rights and your child's rights
- Ask a trusted teacher or parent of a special needs child who has been through the process
- In some places, schools are required to provide parents with a copy of their rights and responsibilities. If you are provided with such a document, read it.

Knowing the law can help you navigate the system and ensure that your child's needs are being met in accordance with the law. This knowledge is important for several reasons:



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1. Knowing the law will enable you to ask the right questions as you navigate the process
2. Communication with the school can break down
3. Application or interpretation of the law may vary
4. You and the school team may disagree on a point of policy
5. You need to know how to preserve and exercise your child's rights if a disciplinary situation arises

So when might knowing the law really make a difference?



### *1. During the special education services determination process*

In general, accessing special education services require several steps.

- Identifying a need for services
- Formal assessment
- Development of an Individual Education Plan (IEP)
- Placement, accommodations and services
- Ongoing monitoring

Knowing your rights and what is supposed to be in place for your child can help to ensure your child has the best plan possible. In the U.S., IDEA provides a number procedural safeguards for the parent throughout the process.

### *2. If communication between you and the school breaks down*

Sometimes despite your best efforts, communication breaks down between parents and school officials. At that point, what you want for your child and what they want may be at odds. It doesn't mean that either of you are being intentionally adversarial.





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It may simply mean that you have a difference of opinion. If this happens, it's important to know what your rights are regarding due process or mediation. If you're not sure, ask. If you need help, reach out to an advocate or attorney for advice.

### *3. A disciplinary problem arises*

These situations can be some of the most trying for parents and educators to deal with. Because the risk of being expelled may exist, it is critical to know your child's rights in this area. You want to be sure the school is following any guidelines set forth for special needs children. In the U.S., IDEA provides some safeguards. Children with special needs have special disciplinary guidelines for dealing with serious behaviours.

### *4. You're asking for an unorthodox or new intervention*

You may hear of a new intervention and want to add it to your child's program. You need to know what the law says about including such a service. For example, in the U.S., the Supreme Court has determined that the specific teaching methodology chosen is up to the school.

### *5. You and the school just can't agree*

If you and your child's IEP team come to an impasse, what happens? What are your rights to due process or mediation? Do you have any? You may not. But if you do, you may have left some important resources on the table if you didn't exercise your rights.

Sometimes the best laid plans fall short for some reason. What if you know your rights, you've gotten a great IEP for your child but you suspect the plan is not being followed or is breaking down? What can you do?

- Volunteer at your child's school or in the classroom. Pay attention to what accommodations or services are being used.
- Keep the lines of communication with the teacher open. Ask how things are going, what's working, what's not working.
- If you think something isn't being provided as per the IEP, ask. It's ok to have the conversation. Teachers aren't perfect and sometimes things get missed.
- Ask your child. He/she can tell you how they're doing things.



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- If you find the plan isn't being followed or is breaking down, ask to reconvene the team to discuss.
- Request *in writing* that the plan be followed.
- If all else fails, know your rights regarding mediation and due process. Exercise them if you need to. It rarely goes this far but it's better to know your rights and never need to exercise them than not know them and your child needlessly goes without services.

Stay informed, stay in contact and stay ready to act on your child's behalf if you need to.

### **14.3 Understanding what 'reasonable adjustments' means**

Reasonable adjustments are measures or actions taken to assist a student with disabilities to participate in education on the same basis as other students. In the U.S., these adjustments are referred to as reasonable accommodations.

Regardless of the term used, reasonable adjustments are one of several interventions used by educators to ensure that all qualified children with disabilities have the same access to education as their regular education peers.

When talking about special education services and interventions, we often hear the terms adjustments (accommodations) and modifications used interchangeably. In fact, they are different interventions with different goals.

- Adjustments/Accommodations are interventions designed to insure equal access to the educational curriculum, to help them work around their disability
- Modifications are individualized changes made to the content and performance expectations



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These interventions that help to level the playing field and allow children with ADHD to have an education equal to that of non-special needs children. Accommodations/adjustments and modifications are often used in tandem to provide the student who has special needs with the best possible access and chance for academic success.

**Quick Fact**

*Another important difference between adjustments and modifications is that adjustments/accommodations will not affect your child's grades. Modifications may affect your child's grades.*

For ADHD kids, accommodations can be a game changer. Time management, distractibility, task management and memory are just some of the challenges a child who has ADHD faces. Accommodations/adjustments can address these and more.

Here are just a few of the many adjustments that can help children with ADHD:

- Extended time to finish an assignment or test
- A change of setting – a quieter space to take a test, preferential seating or even the use of a resource room to reduce stimulation or distraction
- Use of a calculator, scribe or computer
- Visual schedules
- Fidgets
- Breaking assignments into smaller steps
- A class buddy or peer assistance to help with notes or prompts to engage in class
- A homework planner
- Pairing written and verbal instructions



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The specific accommodations your child might need will vary. The way you determine that need is through a careful and thorough assessment of need. When you remove the barriers to learning that a child with ADHD faces, you allow them to fully participate in their education and develop new skills.

#### **14.4 Benefits of inclusion classrooms to meet the needs of students with ADHD**

Another special education term that you will hear frequently is “inclusion” or an “inclusion classroom”.

Inclusion is theory or belief that all students should be part of the general education community. Inclusion is also the practice of integrating special needs children into regular education classrooms to the greatest extent possible. This practice allows them to learn alongside their peers.

The idea behind inclusion is to give the child the equal access and opportunity for learning in the same setting as non-regular education children. Inclusion also helps to meet the requirement of providing services in the least restrictive environment possible. In the case of a school setting, the regular classroom is the least restrictive environment available.

As with any practice, inclusion has its supporters and its opponents.

Those opposed to inclusion express concern about having children with special needs in the regular classroom.



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- They assert that having to implement various accommodations and modifications changes the learning environment for other students.
- Teachers are having to divert more of their attention to the children with special needs.
- In some cases, behaviors can increase the risk of disruption or aggression in the classroom creating an unsafe environment for the other children.
- Parents of children who have special needs worry that inclusion exposes their children to a greater risk for ridicule.

Supporters of inclusion believe that inclusion benefits all students.

- Inclusion provides children opportunity to develop new friendships
- Inclusion supports diversity in the classroom
- Inclusion challenges teachers to learn new skills
- Inclusion challenges and engages students with special needs in ways a segregated classroom cannot
- Inclusion meets the need for equal access and opportunity



Research suggests that inclusion has significant benefits for children with special needs.

- Studies support the idea that children learn better when they learn together
- Inclusive education seems to be more effective than segregated settings
- Individual learning needs can still be met in a diverse class
- Reports and feedback from parents and teachers tend to be positive



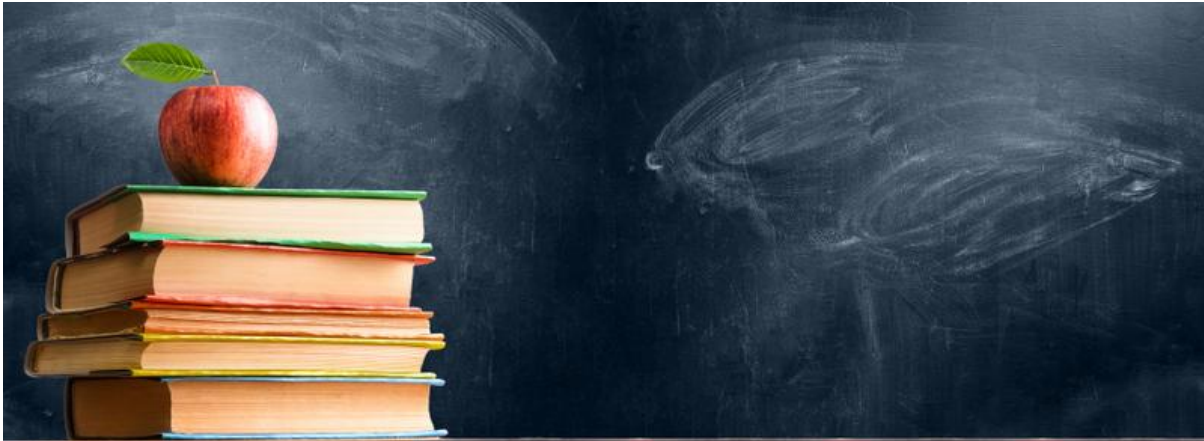


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- Inclusion does not cost more to implement and can be quite cost-effective



Inclusion allows children of all levels of need to get to know each other, work together and experience the diversity of their world. They are able to gain a better understanding of themselves and of others.

Inclusion is commonly practiced in most schools. If your child is to receive special education services, the chances are good that at least some of them will be provided in an inclusion classroom. Some children receive all their services in the inclusion classroom. Other children spend time in what are known as 'pull outs' or in resource rooms where they can get more intensive help for particular needs.

As always, ask questions. Ask to visit an inclusion classroom. Keep the lines of communication open.

**[EXAM LINK](#)**