How do ADHD Students receive an assessment as required under Section 504?

The first response to all students having difficulty is application of the collaborative problem solving process to develop, implement, and evaluate interventions addressing the presenting problems. For students that fail to make adequate progress in response to an intervention plan, a comprehensive evaluation is provided. Although, in the past, students believed to have ADHD were considered for a Section 504 Accommodation Plan, through a separate and abbreviated evaluation process, this alternate evaluation process has been abandoned. The reasons are as follows:

1. The revision in IDEA (97) made it clear that ADHD is a condition that may qualify for an ESE classification of Other Health Impaired (OHI). Therefore, students suspected of having this disability should be afforded the same level of assessment as those that are suspected of having other conditions related to ESE classifications.

2. The symptoms presented by students with ADHD overlap those evidenced by students with a number of other conditions and students may have ADHD in combination with other conditions. As a result, extensive data collection may be necessary to make a differential diagnosis.

3. The Section 504 Accommodation Plan came to be perceived as the “program” option for ADHD students and, although they were being unsuccessful, a number of students continued with these plans when they should have been considered for an IEP.

Use of the comprehensive evaluation process employed with students to determine ESE eligibility, fulfills the assessment requirements of Section 504. In view of the diffuse nature of the behaviors subsumed under the ADHD label, it is essential that all evaluators apply the professionally recognized criteria for diagnosis provided by DSM-IV. In addition, several guides or tools have been locally developed to assist in the assessment/eligibility determination processes. These aids are:

- ADHD/OHI Evaluation Best Practices: Suggested procedures for collecting and reviewing pertinent data about students with attentional difficulties.
- ADHD/OHI Areas & Levels of Need: A standardized method for determining the level of accommodation or modification needed to support a student with attentional difficulties.
- Diagnosing AD/HD: A systematized procedure for utilizing the DSM-IV to diagnose ADHD.

Can a student, found ineligible for ESE, receive a Section 504 Accommodation Plan?

YES. It is important that staff and parents understand that our district’s provision of a comprehensive evaluation to students suspected of having ADHD does not limit their access to the protection of Section 504. Students who are evaluated and found eligible for an IEP are also covered by Section 504. Their IEP serves as their Section 504 Accommodation Plan. Additionally, some students who are diagnosed with a disbling condition, but who fail to
meet the programming need requirement for ESE eligibility, may require a 504 accommodation plan directed at their access issues.

The following sections address the types of cases in which the question of whether a student can have a 504 plan most often arises:

♦ **Can a student be found not to have ADHD, but receive a Section 504 plan for some other disorder discovered in the course of assessment?**

YES. For example, the committee could find that the student’s attention problems are a function of asthma and/or the treatment of it, and develop 504 accommodations related to that condition. This points out one of the reasons for conducting a comprehensive evaluation; ADHD can mask other conditions, and other conditions can mimic ADHD.

♦ **Can a student be found not to have ADHD (in the psycho-educational evaluation), but receive a Section 504 plan based solely upon a diagnosis by another professional?**

NO. When making educational decisions about a student’s eligibility for any specialized program, there is no **requirement** to go with another professional’s diagnosis. The multidisciplinary committee must **consider** all available data (regardless of origin), and that outside data may significantly contribute to a determination of ESE eligibility.

The outside data are considered in conjunction with the district assessment data to determine whether DSM-IV criteria are met; it is not a diagnosis per se that dictates a need for a 504 plan. If the committee determines, based on the totality of the data, that a student does not meet DSM-IV criteria, then the student is not eligible for either OHI or Section 504, regardless of the outside diagnosis.

[As a corollary to this it must be remembered that the opposite is also true. Although Florida DOE has chosen to maintain a medical evaluation requirement for students considered for OHI eligibility, the results of that evaluation have no more weight than any others obtained during the assessment process. The fact that a physician’s report does not confirm the finding of the district’s psycho-educational evaluation does not place a restriction on what the eligibility committee may decide.]

♦ **Can a student be diagnosed as ADHD in the psycho-educational, be determined ineligible for ESE, and provided a 504 plan?**

YES, but there are certain criteria that must be met.

First, let’s answer the question “how can a student be diagnosed ADHD and yet not be eligible for ESE placement?” IDEA says that to be OHI (or any other categorical disability under ESE) there must be a ”need for special education services,” **and**, this need must be something that cannot be provided in the course of regular education programming. In reviewing the DSM-IV criteria for ADHD it appears that the diagnosis **requires** there to be difficulties in school, **but those difficulties themselves don’t necessarily require special education services.**
According to the Equal Employment Opportunity Commission*, “[t]he determination of whether a person has a disability is not necessarily based on the name or diagnosis of the impairment the person has, but rather on the effect of that impairment on the life of the individual.” [*The EEOC is one of the governmental bodies that regulate the ADA, which is the Act under which Section 504 operates. Actions taken by this body are often used as precedents for Section 504 as it applies to education.]

For example this DSM-IV criterion: “A (1) (a) often fails to give close attention to details or makes careless mistakes in schoolwork, work, or other activities.”

This could contribute to a legitimate diagnosis of ADHD, but the remedies may not require ESE services; 504 access accommodations could be sufficient. The teacher may need to systematically and consistently implement a battery of modifications (see below), but these modifications can reasonably be done within the regular education program.

The evaluation specialist would have had to document that the student was exhibiting a significant impairment in school functioning in order to diagnose the condition and the committee would have to determine that the student did not need ESE programming to address that impairment. [In regards to this, Perry Zirkel, a professor of Law and Education and a noted expert on Section 504 says: “And most importantly, the limitation on the overall major life activity must be substantial, not mild or even moderate.”]

The committee would then have to determine that the student needed access accommodations that would be more than a teacher could do without a plan but less than that what would go on an IEP. For example, a student is found to have ADHD but, between the evaluation and the eligibility meeting, he is prescribed medication that controls the presenting problems. He may still need accommodations related to the times that he leaves the classroom to receive his medication, or the student may require a transportation accommodation to assure that he will get on the correct bus and not wander off from his assigned bus stop.

On the other hand, a student should not have to be designated as disabled and have a 504 plan in order to be able to use an organizer or to change where he sits in the classroom. Accommodations/modifications should NOT be simple changes that a reasonable teacher would do as a matter of course. They should be actions that require significant departure from what could be included in the regular procedures in a classroom/school setting. (The fact that there are, or may be in the future, “unreasonable” teachers, does not itself qualify a student for a plan. In those cases it may be the teacher that will need to be worked with in other ways.)

♦ Can a student be diagnosed as ADHD in the psycho-educational, be determined ESE eligible, and provided a Section 504 plan instead of an IEP?

NO. Once the eligibility committee has determined that the student is eligible for an IEP it must offer that, and cannot substitute a 504 plan. When a student requires special education programming, to provide a Section 504 Accommodation Plan for regular class access would represent a denial of FAPE.
Additional considerations and reminders:

♦ Under what conditions may a disabled student (IDEA or Section 504) receive accommodations in standardized assessments?

In the case of a disabled student with an IEP, “the IEP committee will decide whether accommodations are required. The accommodations selected must be the same as, or similar to, those listed on the IEP for classroom use, and must be documented on the IEP for each test.” (BCPS District-wide Testing Handbook, p. F1). The provision of accommodations to students with a 504 plan follows the same basic requirements. “Test accommodations on state or district-wide tests may be provided only if the same, or similar, accommodations are part of the 504 accommodation plan and are in use in the classroom.” (BCPS District-wide Testing Handbook, p. G1).

The phrase “and are in use in the classroom” provides an important limitation. One implication is that a student who has an IEP or a 504 plan would not have an accommodation on that plan that is specific only to FCAT administrations. Secondly, a student would not be found eligible for a 504 plan because of the perception that he/she needs accommodations solely for the FCAT or administration of some other standardized test.

♦ When do the aids and services that a student needs to participate in instruction reach the level of requiring a Section 504 Accommodation Plan?

A common misunderstanding regarding use of a 504 plan is that it can be used as a way to provide assistance to a student “who only needs a little bit of help.” It must be remembered that to be eligible for a Section 504 Accommodation Plan a student must be diagnosed with a disability, the same as ESE. The ADHD student who may benefit from sitting near the teacher, having someone repeat directions, or using an assignment book would not be considered disabled simply because they need these types of interventions. Hopefully, most teachers would see these interventions as part of business as usual in the classroom.

Only the needs of the student can be considered in making a decision about whether a disability classification, and an accommodation plan supported by federal law, is required. For example, a student would not be deemed disabled and receive an accommodation plan under 504 just because one or more of his teachers were unwilling to provide forms of assistance such as those cited above. Nor would the student become disabled because his parent wanted to have leverage to “force” school personnel to provide such interventions.

There is no formula for determining when the types of assistance required by a student cross over from those that teachers could be expected to provided in any classroom, to those that would warrant a 504 accommodation plan with all of the accompanying procedural safeguards. According to Richards Lindsay & Martin, L.L.P., “Good teachers modify all the time for students: It is only when qualified disabled students need a systematic, consistently implemented battery of modifications in order to have his needs met as adequately as non-disabled children that Section 504 becomes necessary.” [underline added]
The following description gives some insight into elements that might distinguish a set of accommodations requiring a Section 504 Accommodation Plan. The elements that would cause a team to move from a less formal approach to interventions to a 504 accommodation plan include:

- Use of specialized equipment
- Alterations to the facility or furniture
- Provision of accommodations in a consistent manner across multiple classrooms and other settings
- Coordination to assure consistent implementation over time
- Combination of in and out of classroom accommodations (e.g. transportation, counseling, medication administration)
- Involvement of additional staff in providing services, monitoring, and the like on a scheduled basis
- Use of multiple accommodations