

Section 504/IEP: Emphasis on Behavioral Concerns What Parents Should Know

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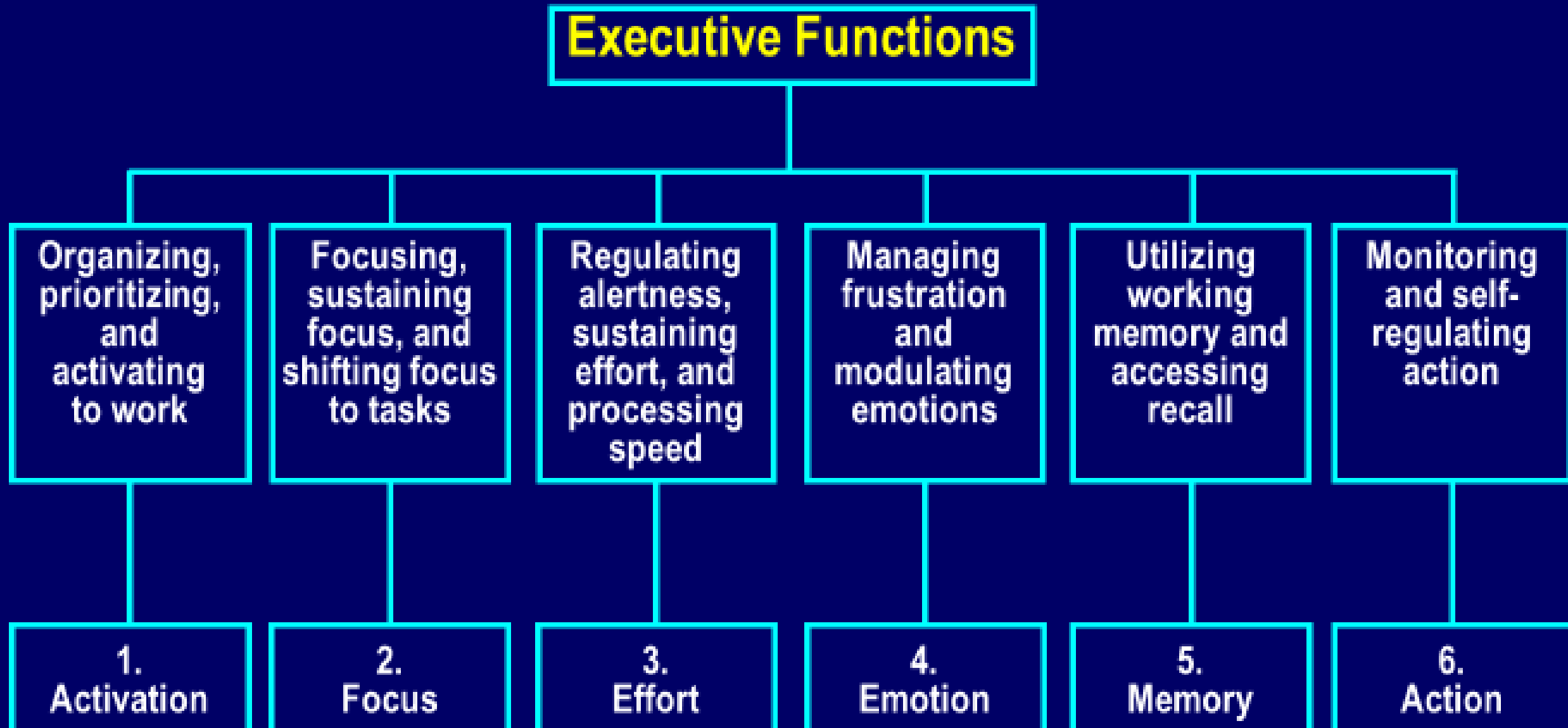
Designing IEP and Section 504 Plans

What's the problem?

How can we consider the problem from an understanding of ADHD?

How can we design an accommodation/intervention, from an understanding of ADHD?

Brown's Model of Executive Functions Impaired in ADHD



How Behavioral Concerns are Addressed under Section 504 and under Special Education

What Behaviors Are We Talking About

- Minor Disruptive
 - Argumentative
 - Frustration
 - A Pattern of Repeated Difficulties
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- Aggression
 - Destruction of Property
 - Drugs and Alcohol
 - Fight that Results in Serious Injury

FAPE Requirements

- - Schools must provide education and services that meet the needs of students with disabilities as adequately as those without disabilities.
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- - Individualized plans (Section 504 plans) should be developed to ensure consistent understanding and implementation of services.
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- Behavioral Supports
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- - Schools must identify and implement necessary behavioral supports to help students manage disability-related behaviors.
- - Behavioral Intervention Plans (BIPs) may be developed to address specific behavioral needs.

Section 504 and Behavior Management Plans (BMPs)

Individual BMP provisions supplant the use of the regular discipline code.

Failure to discipline students in accordance with his/her BMP constitutes a failure to properly implement the Section 504 plan, which is a denial of FAPE

A Behavioral Management Plan ensures that a student with a disability is able to maintain successfully the placement that has been determined to appropriately meet his educational needs

Neither Section 504 implementing regulations or guidance from OCR mandates a FBA.

However, if a school division has adopted IDEA provisions to meet Section 504 requirements, then the school division will follow the IDEA regulations.

Disciplinary Actions

Schools must consider the impact of a student's disability when determining appropriate disciplinary actions.

Disciplinary measures must not be more severe for students with disabilities compared to their peers for similar behaviors.

Guidance on how Section 504 prohibits discrimination based on disability in student discipline.

- Schools must ensure nondiscrimination when imposing discipline on students with disabilities.
- Protected from exclusion from a program or activity on the basis of having ADHD, e.g., for an athletic, extracurricular, school-sponsored trip or summer program, advanced study programs
- Compliance with Section 504's requirement to provide a Free Appropriate Public Education (FAPE) can help manage behavior linked to disabilities.
- Responsibilities of Schools
 - Must provide FAPE to students with disabilities, addressing behavioral, social, emotional, and academic needs.
 - Must administer discipline in a nondiscriminatory manner, ensuring safety while supporting students.
 - Schools are not required to choose between safety and compliance with the law.

When Should Behavior Become a Part of a Section 504 Plan or an IEP

OCR's Commitment

Ensuring equal access to education and preventing discrimination through enforcement of civil rights laws.

Acknowledges that many students with disabilities face discipline due to lack of support and services.

The same protections available to students with disabilities under IDEA are available to students qualified under Section 504

- ◆ An LEA may discipline a Section 504 student without applying due process procedures if:
 - The school is disciplining the student with respect to the use or possession of illegal drugs or alcohol; and
 - The student is currently engaged in the use of illegal drugs; and
 - The disciplinary action taken with respect to the disabled student is the same as those taken with nondisabled students in similar situations.

Section 504 Eligibility Is NOT Automatic But May Be Considered IF

a student has had more than the average disciplinary actions.
This suggests that the student may have an unidentified disability.

Suspension or expulsion is being considered and you don't have a basis to consider eligibility under IDEA.

Bus Suspensions

- ◆ Section 504 parallels IDEA provisions that a bus suspension counts as a removal if FAPE is interrupted.
- ◆ According to OCR, only the school's offer to provide alternative transportation erases the removal.
- ◆ If the student comes to school on his/her own, or the parent brings the student, and the school does not offer an alternative (reimbursement or alternative form of transportation), OCR considers the student removed from his placement that day even if the student is there.

Positive Behavioral Intervention and Support

PBIS identifies the most problematic behaviors, the child's strengths, the settings and circumstances in which problem behaviors occur and in which they are minimized and identifies skills for the child to learn.

A behavioral intervention plan can then be developed that takes into account these factors.

The plan provides techniques for the teacher to use to minimize difficulties, interventions when they do occur and guidance in teaching skills. Interventions with the child provide positive rewards and positive consequences to help the child more easily focus on what is desired.

Manifestation Determination Review (MDR) Hearing

- ◆ The school division must conduct a MDR before suspending a student with a disability for more than 10 days.
- ◆ Such a disciplinary action is considered a significant change in placement, triggering the re-evaluation requirements.
 - ◆ Factors to consider when determining if there is a “pattern” of removals:
 - ◆ Length of each suspension;
 - ◆ Proximity of the suspensions to each other;
 - ◆ Total time the student is excluded from school.

Cessation of Services

- ◆ Section 504 does not impose an obligation to provide continuing services for properly expelled students.
 - However, it is discriminatory to not provide services if services are provided in these instances to nondisabled students.
 - If the school division has adopted IDEA requirements to comply with Section 504, IDEA directs the school division’s obligations.

More About A Manifestation Determination Hearing

Appropriate IEP?

IEP being followed?

No Behavior Intervention Plan?

BIP not kept current?

OSEP (Office of Special Education Programs) and OCR (Office of Civil Rights) Are Making It Clear

- Supporting Students with Disabilities and Avoiding the Discriminatory Use of Student Discipline under Section 504 of the Rehabilitation Act of 1973
- U.S. Department of Education Office for Civil Rights
 - July 2022

Compliance with IDEA and Section 504 requirements to provide a free appropriate public education (FAPE) to students with disabilities can assist schools in effectively supporting and responding to behavior that is based on a student's disability and that could lead to student discipline.

By using Section IDEA and 504 procedures to identify and meet the behavioral, social, emotional, and academic needs of students with disabilities as required for FAPE, schools can help prevent or reduce behaviors that might otherwise result in discipline.

POSITIVE, PROACTIVE APPROACHES TO
SUPPORTING CHILDREN WITH
DISABILITIES: A GUIDE FOR STAKEHOLDERS

OSEP Policy Support 22-01 (TA guide)

U.S. DEPARTMENT OF EDUCATION OFFICE
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Resources

United States Department of Education
Office of Civil Rights
Resource Guide for Students with ADHD

<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201607-504-adhd.pdf>

This is a document you must have.

- Section 504 Protections for Students with Anxiety Disorders
 - Section 504 Protections for Students with Depression
- Section 504 Protections for Students with Eating Disorders
- Section 504 Protections for Students with Bipolar Disorder
- These resources are part of a larger series on specific medical conditions, which thus far includes fact sheets on diabetes, GER/GERD, food allergies, asthma, cancer, sickle cell disease, and epilepsy.

QUESTIONS AND ANSWERS:
ADDRESSING THE NEEDS OF CHILDREN
WITH DISABILITIES AND IDEA'S DISCIPLINE
PROVISIONS

OSEP Q&A 22-02

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Center for Parent Information & Resources

Parentcenterhub.org

Parent Educational Advocacy Training Center (peatc.org)

Your State's Special Education Ombudsman

**Your State's Department of Education, Special Education,
Office of Dispute Resolution**

Thank you!

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