

# My Child Learns Differently

A Guide for Parents and Students  
In search of Special Education Services or reasonable accommodation

By: Susan Doherty

## Overview

### Special Education -

Most common view

A few examples that qualify are:

- Temporary Injury
- Allergies
- Transportation Needs
- Cognitive Impairments - ADD/ADHD

## Agenda

### Review of the Federal Law -

Americans with Disabilities Act (ADA)  
 Individuals with Disabilities Education Act  
 (formerly called P.L. 94-142 or the Education for all Handicapped Children Act of 1975)  
 Rehabilitation Act of 1973  
 Section 504

### Key Definitions and standard forms used in Special Education planning

### Advocacy (Video) and suggestions for parents/students

### Appeal process

Guest Speaker Roy Burton Mediator for Michigan Special Education Mediation Program (MSEMP)

### Focus on one commonly undiagnosed conditions in Special Education - ADHD

Guest Speaker Bradley Mesclier, Certified Educator and former student with ADD.

### Required Actions for schools/Suggested actions for parents

### Case Review - class exercise

## The Federal Law -

The Americans with Disabilities Act (ADA) prohibits discrimination on the basis of disability in employment, State and local government, public accommodations, commercial facilities, transportation, and telecommunications.

<http://www.ada.gov/cguide.htm#anchor62335>

The Individuals with Disabilities Education Act (IDEA) requires public schools to make available to all eligible children with disabilities, a free appropriate public education (FAPE) in the least restrictive environment appropriate to their individual needs. It also includes Child Find which requires all school districts to identify, locate and evaluate all children with disabilities, regardless of the severity of their disabilities.

<http://www.wrightslaw.com/info/child.find.index.htm#sthash.XaJWxe22.dpuf>

## The Federal Law (continued) - <http://www.ada.gov/cguide.htm#anchor62335>

The Rehabilitation Act prohibits discrimination on the basis of disability in programs conducted by Federal agencies, in programs receiving Federal financial assistance, in Federal employment, and in the employment practices of Federal contractors. The standards for determining employment discrimination under the Rehabilitation Act are the same as those used in title I of the Americans with Disabilities Act.

<http://www.ada.gov/cguide.htm#anchor62335>

Section 504 states that "no qualified individual with a disability in the United States shall be excluded from, denied the benefits of, or be subjected to discrimination under" any program or activity that either receives Federal financial assistance or is conducted by any Executive agency or the United States Postal Service.

<http://www.ada.gov/cguide.htm#anchor62335>

## Helpful Definitions

Individual with a disability means any person who: (i) has a mental or physical impairment that substantially limits one or more major life activity; (ii) has a record of such an impairment; or (iii) is regarded as having such an impairment" [34 C.F.R. §104.3(j)(1)].

Impairment as used in Section 504 may include any disability, long-term illness, or various disorder that "substantially" reduces or lessens a student's ability to access learning in the educational setting because of a learning-, behavior- or health-related condition. ["It should be emphasized that a physical or mental impairment does not constitute a disability for purposes of Section 504 unless its severity is such that it results in a substantial limitation of one or more major life activities"]

<http://www.greatschools.org/gk/articles/section-504-2/>

## Helpful Definitions (continued)

Major Life Activities include, but are not limited to: self-care, manual tasks, walking, seeing, speaking, sitting, thinking, learning, breathing, concentrating, interacting with others and working.

Substantially Limits Substantially limits is not defined in the federal regulations. However, in a letter from the Office for Civil Rights (OCR), they state, “this is a determination to be made by each local school district and depends on the nature and severity of the person’s disabling condition.”

FAPE - Free, Appropriate, Public Education

<http://www.greatschools.org/gk/articles/section-504-2/>

## Individual Education Program (IEP) Form and Use

IDEA requires public school systems to develop appropriate Individualized Education Programs (IEP's) for each child. The specific special education and related services outlined in each IEP reflect the individualized needs of each student.

IDEA also mandates that particular procedures be followed in the development of the IEP. Each student's IEP must be developed by a team of knowledgeable persons and must be at least reviewed annually. The team includes:

- the child's teacher;
- the parents,
- subject to certain limited exceptions; the child,
- if determined appropriate; an agency representative who is qualified to provide or supervise the provision of special education; and
- other individuals at the parents' or agency's discretion.

(Handout Provided - [www.fws.gov/forms/3-2020B.doc](http://www.fws.gov/forms/3-2020B.doc))

## 504 Plan Form and Use

The building Section 504 Team, which includes the parents, will be responsible for determining the special accommodations and services that are needed to ensure that the student receives a FAPE. The Plan will specify how services will be provided and by whom.

The Section 504 Plan shall be:

- A copy of the Plan shall be provided to the parent(s)/guardian(s) prior to implementation
- Parent must be provided a copy of the Notification of Parental Rights (Form H).
- Only school personnel with implementation responsibilities shall be informed of the existence and particulars of the plan.
- Review will be at least annually to determine whether the Section 504 Plan continues to be appropriate or whether any changes are thought to be necessary.
- A school district shall not require outside evaluations or examinations as a condition of eligibility or plan continuance. Medical evaluations are NOT required under Section 504. The school district may NOT require the parent to provide medical information or evaluation.
- If the evaluation team determines that a medical evaluation is necessary, the district must pay for it. *Letter to Veir, 20 IDELR 864 (OCR, 1993).*

(Handout Provided - <http://www.resa.net/specialeducation/section504/>)

## 504 Form and Use

A 504 Plan is not an Individual Education Program (IEP). An IEP requires more specialized instruction.

Section 504 does not provide funding for special education or related services.

	IEP	504 Plan
Basic Description:	A blueprint or plan for a child's special education experience at school.	A blueprint or plan for how a child will have access to learning at school.
What It Does:	Provides individualized special education and related services to meet the unique needs of the child. These services are provided at no cost to parents.	Provides services and changes to the learning environment to meet the needs of the child as adequately as other students. As with IEPs, a 504 plan is provided at no cost to parents.
What Law Applies:	The Individuals with Disabilities Education Act (IDEA). This is a federal special education law for children with disabilities.	Section 504 of the Rehabilitation Act of 1973. This is a federal civil rights law to stop discrimination against people with disabilities.
Who Is Eligible:	To get an IEP, there are two requirements: <ol style="list-style-type: none"> <li>1. A child has one or more of the 13 specific disabilities listed in IDEA. Learning and attention issues may qualify.</li> <li>2. The disability must affect the child's educational performance and/or ability to learn and benefit from the general education curriculum.</li> </ol>	To get a 504 plan, there are two requirements: <ol style="list-style-type: none"> <li>1. A child has any disability, which can include many learning or attention issues.</li> <li>2. The disability must interfere with the child's ability to learn in a general education classroom. Section 504 has a broader definition of a disability than IDEA. That's why a child who doesn't qualify for an IEP might still be able to get a 504 plan.</li> </ol>



[https://www.youtube.com/watch?v=MW5NlZvPj\\_I](https://www.youtube.com/watch?v=MW5NlZvPj_I)

## Advocacy Steps and Good Practices

<http://www.mpas.org/resources/special-education-manual>

► **Advocacy Hint: It's the Constitution.** Although constitutional claims have not been used much in recent years because of the passage of federal and state laws, the constitutional rights of students with disabilities still exist. Given that the current laws are amended often, it's a good idea to remember that there are constitutional guarantees to individual services and due process. Also, the Michigan Supreme Court has ruled that the state law gives students the enforceable right to special education supports. *Durant v. State*, 566 N.W.2d 272, 280 (Mich. 1997). Even if the federal law is weakened, students may assert their rights under state law.

► **Advocacy Hint: State law has more.** The Michigan law has protections for students that go beyond those in the federal law in some cases. For example, students may be eligible for special education services in Michigan from birth to age 26. Also, Michigan law addresses some issues that are not covered in the federal law, such as class size and residency. When thinking about a student's rights, make sure to consider the protections under state law as well as federal law.

► **Advocacy Hint: When you hear "have to" or "cannot"...** Many schools and school districts have several written and unwritten policies and procedures for doing business. Sometimes school personnel assert these policies as reasons why they "have to" do something or "cannot" do something to support a student. If you hear this, ask for the basis of the statement to find out if it is grounded in the law.

## Advocacy Steps and Good Practices (Continued)

► **Advocacy Hint: Find Federal law for free.** The U.S. Government Printing Office maintains web sites for all of the federal laws, including the United States Code and the Code of Federal Regulations. The web site address for the electronic Code of Federal Regulations is <http://ecfr.goy>. Selected sections of the federal law may also be found in the combined MARSE document on the Center for Educational Networking website, [www.cenmi.org](http://www.cenmi.org) (see next page)

► **Advocacy Hint: Find Michigan law for free.** The Michigan Legislature maintains a web site that provides free access to Michigan laws. The web site address is <http://www.legislature.mi.gov>. The Center for Educational Networking (CEN) maintains a web site for the state rules and also has information about educational resources, including a statewide directory of special education personnel. The CEN web site address is <http://www.cenmi.org>.

► **Advocacy Hint: Highly qualified teachers required.** The 2004 IDEA Amendments require school districts to offer instruction by "highly qualified teachers." **34 CFR 300.18**. In general, teachers who teach core academic subjects must have background in the subjects they are teaching. A teacher teaching math to high school students with disabilities, for example, would have to have a credential or other qualification in math. The qualifications are relaxed some for teachers who teach to children who take the alternate assessment. A parent cannot challenge qualifications through a due process hearing but may file a compliance complaint.

## Advocacy Steps and Good Practices (Continued)

► **Advocacy Hint: It's not just about grades.** Sometimes schools will tell parents that their children do not qualify for special education because they are receiving passing grades. The 2006 federal rule changes clarified that a child who is making passing grades or moving from grade to grade may still have needs that qualify him or her for special education services. **34 CFR 300.101(c); 71 Fed.Reg. 46580 (8/14/06)**.

► **Advocacy Hint: Appropriate for the student, not others.** There is sometimes confusion about what it means to integrate students with disabilities into the general education classroom "to the maximum extent appropriate." It may be helpful to add "appropriate for the student with the disability" to the end of the statement so the intent is clear; any time away from general education must benefit the student with the disability, not necessarily the other students in the class, the teacher, or the school district. Time in a resource room is a benefit to a student with a disability because it offers additional help on academic subjects beyond the usual help the students get in the general education classroom. Likewise, time spent in speech therapy benefits the student because it increases success in communication in all aspects of general school life.

► **Advocacy Hint: A person is not a label.** A student does not have to attend a program which corresponds to his or her qualifying disability. For example, a student who is eligible under the learning disability category is not limited to attending school in a learning disabled program.

## What to do if you feel your child's rights are not being honored?

Under Individuals with Disabilities Education Act (IDEA) if parents disagree with the proposed IEP, they can request a due process hearing and a review from the State educational agency if applicable in that state. They also can appeal the State agency's decision to State or Federal court.



## Roy D. Burton

I am a licensed Restorative Practices Trainer of Trainers certified by the International Institute of Restorative Practices (IIRP Graduate School). Also I am approved by the Michigan Office of Special Education to mediate cases involving disabled students under the Michigan Special Education Mediation Program (MSEMP).

### **AREAS OF SPECIFIC EXPERTISE:**

- Restorative Practices Training and Implementation •
- Rapid Conflict Resolution
- Civil Law & Mediation • Organizational Leadership & Team Building
- HR Management & Recruiting/Training/Supervision
- Regulatory Compliance & Standards
- Legal/Paralegal Operations & Documentation •
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## Special Education

The Michigan Special Education Mediation Program (MSEMP) is a federally funded project of the Michigan Department of Education—Office of Special Education.

These services are provided at no cost to families and schools.

**IEP Facilitation**  
Facilitation can help the parties involved to develop the best educational program for their circumstances. The Facilitator assists with communication so everybody can focus on resolving issues.

**Mediation**  
This process aids the parties in resolving a dispute that may arise from IEP implementation. The process is voluntary and confidential. The Mediator fosters cooperative discussion, however nobody will be forced into signing an agreement.

**Training**  
Workshops on conflict resolution and collaborative communication are available to parents, educators, and service providers.

**MSEMP Statistics:**

- 80% Mediation Agreement
- 90% User Satisfaction
- Average Resolution Time = Less than 1 Month

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## Dispute Resolution For Individuals & Businesses

**Mediation & Conflict Resolution Services**

The Resolution Center provides facilitative mediation services to the residents and businesses of Washtenaw and St. Clair counties in Michigan.

**Types of Disputes Handled**

- Domestic Relations (including parenting time and divorce)
- General Civil Litigation
- Small Claims Matters
- Landlord/Tenant Disputes
- Guardianship and Family Caregiving Issues
- Employment (employees/employee and employee/employer)
- Discrimination (through Mich. Department of Civil Rights)
- Neighborhood and Community Conflict
- Family Disputes
- Claims Involving Money and Personal Property
- Victim Offender Reconciliation
- Special Education Complaints (through Mich. Dept of Civil Rights)
- Business to Business Disputes
- Contractual Matters
- Large Group Facilitation

**Mediation Specialties**

- Americans with Disabilities
- Domestic, including Parenting Time
- Employment
- Discrimination
- Guardianship / Family Caregiving
- Mental Health
- Restorative Justice
- Special Education
- Victim / Offender
- Public Policy
- Large Group Facilitation

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**Have Questions About Mediation?**

Visit our FAQs section

### Reconciling Differences in Special Education

The Individuals with Disabilities Education Act (IDEA) provides many tools for helping children with disabilities succeed in early childhood and in school.

Along the way, however, parents and educators may differ over a child's Individualized Family Service Plan (IFSP), Individualized Education Program (IEP), or other special education matters.

The IDEA and the Michigan Department of Education (MDE) encourage the use of facilitated meetings and mediation to reconcile differences and resolve conflict early. Both services are offered by the Michigan Special Education Mediation Program (MSEMP). These services can help parents and educators:

- Collaborate more effectively.
- Reach decisions faster.
- Preserve working relationships.
- Avoid costly hearings and complaints.

The MSEMP provides trained facilitators and mediators across the state at no charge. MSEMP mediation agreement rates average 80 percent, and customer satisfaction rates average more than 90 percent.

#### Michigan Special Education Mediation Program (MSEMP)

316 S. Creyts Rd., Suite A  
Lansing, MI 48917

Phone: (517) 435-2274  
Toll-Free: (800) 8RESOLVE  
Fax: (517) 435-1152  
Email: [msemp@doe.michigan.gov](mailto:msemp@doe.michigan.gov)  
<http://msemp.cenmi.org>



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**STATEMENT OF COMPLIANCE WITH FEDERAL LAW**  
The Michigan Department of Education (MDE) complies with all federal laws and regulations prohibiting discrimination and with all requirements of the U.S. Department of Education (USED).

April 2013



### Facilitation and Mediation



Helping parents, educators, and service providers develop productive relationships to resolve issues related to early intervention and special education.

**(800) 8RESOLVE**  
<http://msemp.cenmi.org>



### Why Consider the MSEMP?

**Experience**  
All MSEMP mediators and facilitators are trained in mediation and facilitation techniques and special education law and regulation (including acronyms and the IFSP and IEP processes). Many have more than ten years experience with the program.

**Fairness**  
MSEMP mediators and facilitators are trained to be neutral. They are not advocates and do not take sides in a case. The MSEMP, which is federally funded through the MDE, is not affiliated with any school district or special education, advocacy, disability, or parent organization.

**Local, Available, Convenient**  
The MSEMP makes facilitation and mediation services available through a statewide network of local centers. Services can be obtained by:

- Calling (800) 8RESOLVE.
- Submitting a request to the MSEMP at <http://msemp.cenmi.org>.

An intake specialist will gather information about the meeting or dispute, contact the other parties to obtain consent for the use of services, and schedule meetings that are convenient for all parties.

#### Facilitated Meetings

The MSEMP provides trained neutral facilitators for meetings involving:

- IFSPs and IEPs.
- Manifestation determination reviews.
- Resolution meetings related to due process complaints.

MSEMP facilitators help meeting participants focus on the issues and create solutions. Facilitators ensure that all participants have a chance to present their views and ideas. They also keep an eye on the clock to help meetings stay on track.

Consider using a facilitator when meetings involve:

- Multiple or complex issues.
- A large number of participants.
- Uncertain working relationships.
- Potential conflicts.
- Formal complaints.



#### Mediation

Mediation helps parties resolve disputes related to special education and early intervention issues. A trained, neutral mediator fosters a cooperative discussion among the parties. The parties make the final decisions.

Mediation is voluntary and confidential to encourage openness. This helps the parties identify and resolve their issues. A successful mediation results in a written, signed agreement that can be incorporated into an IFSP or IEP and is enforceable in court.

Mediation can be used at any time for any special education issue. It can be used to resolve disputes before or after requesting a hearing or filing a state complaint.

The MSEMP mediates cases involving a wide range of complex special education issues. Like facilitation, mediation is made available through the MSEMP at no cost to parents and school districts.

**A Comparison of Dispute Resolution Processes**

Features	Mediation	State Complaint	Due Process Hearing	Court
Decision Maker	Parents and educators	MI Dept. of Education	Administrative Law Judge (ALJ)	Judge
Decision Type	Mutual written agreement	Compliance finding	ALJ ruling	Written opinion
Process	Collaborative	Adversarial	Adversarial	Adversarial
Time	30 days (average)	60 days	45 days or more	2+ years
Cost	Free through MSEMP	Free	\$50,000+	Substantial
Results	Win/win	Win/lose	Win/lose	Win/lose



## Bradley Mesclier

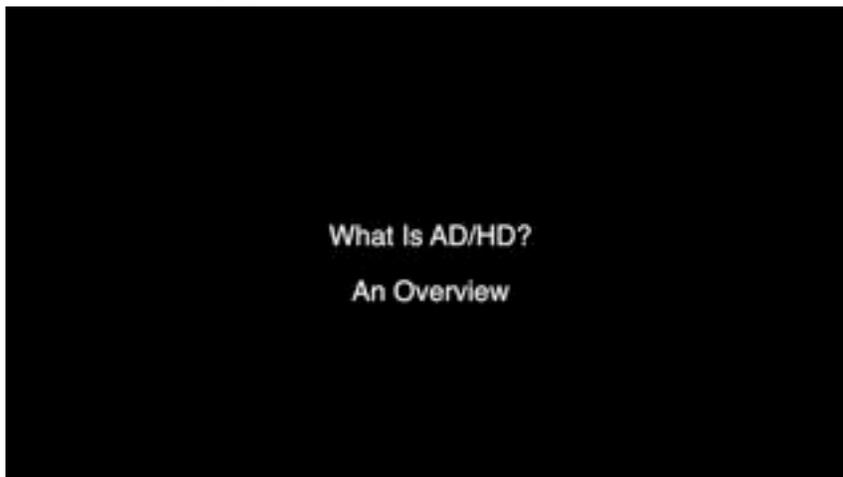
Long Term Substitute Teacher at Waterford School District  
Greater Detroit Area Higher Education

Current  
Waterford School District,  
International Academy West,  
Duel Novi

I am a High School Mathematics Teacher at Waterford Mott High School, who also was also undiagnosed with a ADD throughout my most of my academic career. In my third year of college, I finally saw a specialist and found out that I was ADD. I believe that being diagnosed and properly treated gave me a better opportunity to do better in school and helped me stay focused so that I could reach my goal of being teacher. I graduated from Grand Valley State University with a Bachelor's degree in Mathematics and Secondary Education and a minor in Psychology.

## Attention Deficit Hyperactivity Disorder (ADHA)

Formerly Attention Deficit Disorder (ADD) was called out as a separate disorder, but now they are combined into one category ADHD



[https://www.youtube.com/watch?v=0Wz7Ld\\_FJVM](https://www.youtube.com/watch?v=0Wz7Ld_FJVM)

## ADHD as an undiagnosed condition:

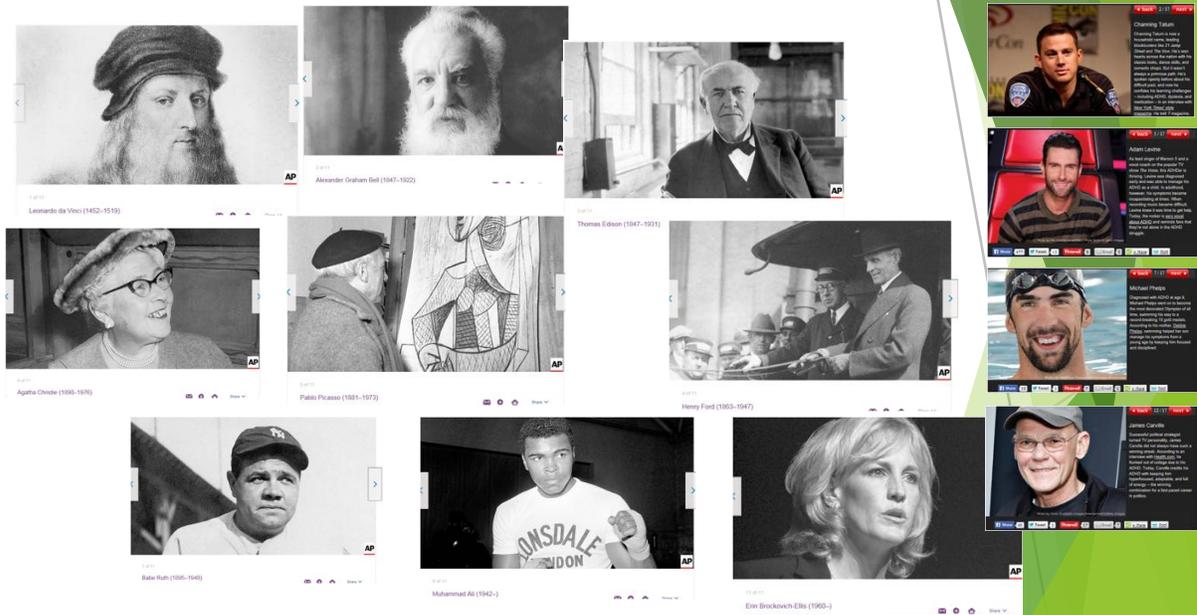
### Symptoms:

- Forgetfulness
- Disorganization
- Frustration/Mood Swings
- Sadness/Depression/Sense of failure
- Inability to focus

### What is NOT a forgone attribute of ADHD:

- Lack of initiative
- Lack of intelligence
- Lack of creativity

## Famous People with ADHD - Historical and Current



## Increased Rate of Diagnosis

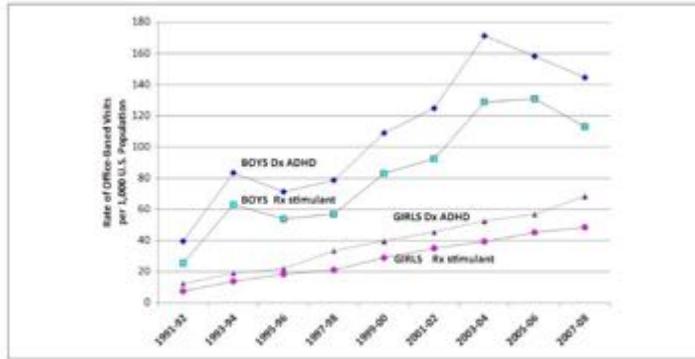
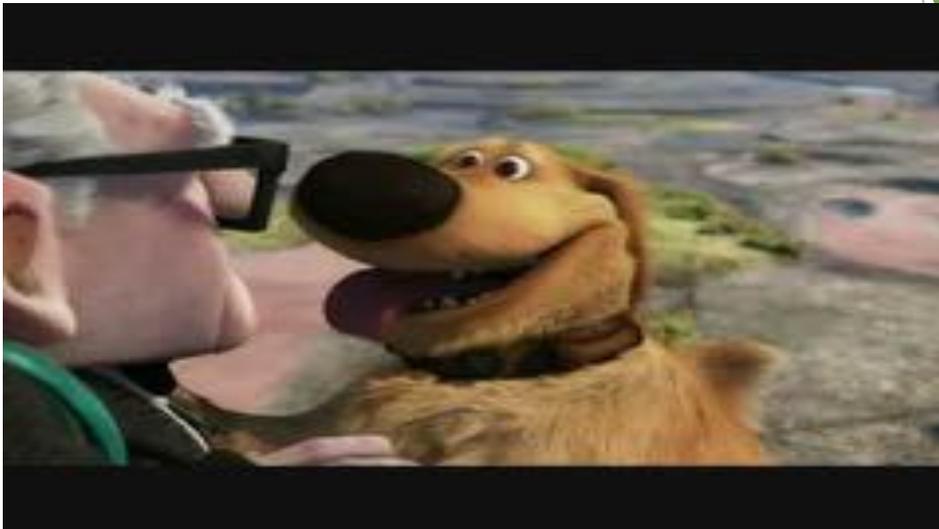


Figure 1. Annualized rate of office-based visits per 1,000 US population aged 5 through 18 years with a diagnosis (D<sub>x</sub>) of attention-deficit/hyperactivity disorder (ADHD), and rate with a D<sub>x</sub> of ADHD and use of (R<sub>x</sub>) a stimulant or atomoxetine, by gender

Despite increasing rates of diagnosis, many cases continue to remain undiagnosed.

<http://blogs.discovermagazine.com/neuroskeptic/2012/03/13/the-age-of-adhd/#.Vu3cqlf2amg>



## Class Exercise

Class will divide into two groups

Review case study

Provide a determination on issue at hand

Complete a 504 Plan for “Cantankerous” considering the following:

- Appropriate education plan
- Appropriate disciplinary action
- Appropriate behavioral modification services
- Appropriate measures of success for annual review

Review results of two plans with the class

## Services and Supports for non Public Schools

What if a student chooses or is referred to a private or charter school.  
What if a child is in a detention facility?

Special education and related services must also be provided in charter schools, alternative schools, juvenile detention and juvenile justice programs, and private schools in some situations.

Parent Choice for personal reasons - Such a student does not have a legally enforceable right to a FAPE or the services to which he or she would be entitled if enrolled in public school. **34 CFR 300.137(a)**. Instead, the public school system must determine the percentage of students enrolled in private school and devote a similar percentage of services to these students in general, and not as a result of the individual needs of specific students. **34 CFR 300.133**.

Recommended per IEP - Student is entitled to a FAPE and has all the rights a public school student has. **34 CFR 300.146**.

## Services and Supports for non Public Schools

Parent Choice - parents feel that the public school is not offering a FAPE.

IDEA places upon the parents the duty to first provide the public school with notice of the intent to place the student in private school, either by raising their concerns and intent at the most recent IEP meeting or by providing written notice of their intent to place the student in private school at least **ten business days prior to removing the student from public school**. If the parents do not provide this notice, they may later lose their right to tuition reimbursement if a hearing officer or court finds that the public school failed to offer a FAPE in the LRE. 34 CFR 300.148(c). **If the parents do provide the required notice, initiate a hearing, and prove the public school's failure to offer a FAPE, the parents are entitled to reimbursement of tuition and associated costs of the private school placement.** 34 CFR 300.148(b).