

entitled to the protections under Section 504.³

Over the past five fiscal years (2011-2015), the Department's Office for Civil Rights (OCR) has received more than 16,000 complaints alleging discrimination on the basis of disability in elementary and secondary education programs. Approximately 2,000, or one in nine, of these complaints involved allegations of discrimination against a student with ADHD. In resolving such complaints, OCR has found that many teachers and administrators often take appropriate action to ensure that students with ADHD receive the protections to which they are entitled under Federal law, but many others are not familiar with this disorder, or how it could impact a student's equal access to a school district's program.

Through our enforcement efforts, we have learned that many students with ADHD are still experiencing academic and behavioral challenges in the educational setting, and that policy guidance is needed to ensure that those students are receiving a free appropriate public education (FAPE) as defined in the Department's regulations implementing Section 504. OCR investigations have revealed that students with ADHD could be denied FAPE because of problems that school districts have in identifying and evaluating students who need special education or related services because of ADHD. Some of these problems are as follows:

- students never being referred for, or identified by the school district as needing, an evaluation to determine whether the student has a disability and needs special education or related services;
- students not being evaluated in a timely manner once identified as needing an evaluation; or
- school districts conducting inadequate evaluations of students.

In addition, even if properly identified, a student with ADHD who is determined to have a disability may not always receive required services. OCR, through its enforcement efforts, has observed that school districts fail to meet their Section 504 obligations when they:

- make inappropriate decisions about the regular or special education, related aids and services, or supplementary aids and services the student needs, and the appropriate setting in which to receive those services based on a misunderstanding of ADHD and the requirements of Section 504;

³ OCR, *Dear Colleague Letter* (Jan. 19, 2012), <http://www.ed.gov/ocr/letters/colleague-201109.html>. See also OCR, *Questions and Answers on the ADA Amendments Act of 2008 for Students with Disabilities Attending Public Elementary and Secondary Schools* (Jan. 19, 2012), <http://www.ed.gov/ocr/docs/dcl-504faq-201109.html>. Further discussion on the interplay between Section 504 and the Americans with Disabilities Act can be found in the accompanying Resource Guide in the section "Federal Disability Laws."