

SCR

56

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Mary Van Nimwegen

SCR 56

H. HESS

5/7/90

# HOUSE COMMITTEE REPORT

(7)

Date Referred: May 6, 1990

FURTHER REFERRALS:

Date of Committee Action: 5/7/90

The HESS Committee considered:

SCR 56

SENATE CONCURRENT RES NO. 56

ATTENTION DEFICIT DISORDERS

Relating to education for students with attention deficit disorders.

RECOMMENDATIONS:

- be replaced with \_\_\_\_\_  the same title
- have attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of intent

ATTACHES NEW FISCAL NOTE(S):  
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact \_\_\_\_\_
- zero fiscal note \_\_\_\_\_
- zero with analysis \_\_\_\_\_

- fiscal note(s) \_\_\_\_\_
- zero fiscal note(s) 5/3/90 / DOB
- zero fn/analysis \_\_\_\_\_

SIGNING DO PASS: .

SIGNING:  
(Check approp. column)

Do Not  
Pass  
No Rec  
Amend

[Signature]  
[Signature]  
[Signature]  
[Signature]  
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	Do Not Pass	No Rec	Amend
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[Signature]  
Chairman's Signature

## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_  
 Title: Education for students with  
attention deficit disorders  
 Sponsor: Senate Judiciary  
 Requestor: Senate HESS

Agency Affected: Education  
 BRU: Education Program Support  
 Components: Special & Supplemental  
Services

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CAPITAL</b>						
<b>REVENUE</b>						

**FUNDING:** (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :** (Attach a separate page if necessary)

Prepared by: Mary Hakala Phone: 465-2800  
 Division: Commissioner's Office Date: 5/3/90

Approved by Commissioner: William G. Demmert Date: 5/3/90  
 Agency: Education

Distribution (by preparer):  
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Patrick M. Rodey  
Senator

# Alaska State Legislature



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May 6, 1990

Senate

## MEMORANDUM

To: Representative Johnny Ellis  
Chair - House Health, Education & Social Services  
  
Members, House HESS

From: Senator Pat Rodey

Subject: SCR-56, resolution requesting the Department of Education to review school district compliance with federal laws regarding learning disabilities, particularly as it may relate to Attention Deficit Disorder (ADD).

Constituents have contacted legislators expressing concern that school districts within Alaska may not be in compliance with Public Laws, 93-112 (Rehabilitation Act of 1973) and 94-142 (Education of the Handicapped Act).

This resolution requests the Department of Education to review school district policies as they relate to compliance with federal laws pertaining to the education of students with learning disabilities.

Some professionals in both education and behavior studies believe as many as 13-20% of American students suffer from some form of Attention Deficit Disorder (ADD). Parents whose children are diagnosed with ADD are eager to determine whether federal funds are being used properly with respect to children with learning disorders, and particularly as it may relate to programs in the schools to deal with ADD.

The attached materials are supplied, in part, from a group called LADDER, Learning and Attention Deficit Disorder Educational Resource, and parents who have children experiencing learning disorders.

Page Ford 345-4650

Section 504 Regulations  
Nondiscrimination on the Basis of Handicap in  
Programs and Activities Receiving or Benefiting  
from Federal Financial Assistance

(34 Code of Federal Regulations Part 104)

√ The Section 504 Regulations were recodified and redesignated as  
34 CFR Part 104 on May 9, 1980, 45 Fed. Reg. 30902, 30936-30955.

Subpart A—General Provisions

Reg. 104.1 Purpose.

The purpose of this part is to effectuate section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

OCR POLICY INTERPRETATION

Discrimination That Occurred Before the Effective  
Date of the Sec. 504 Regulations

The Office for Civil Rights will investigate complaints of alleged discrimination that occurred after September 26, 1973, the date Sec. 504 became law, and prior to June 3, 1977, the date the Sec. 504 regulations became effective, if those complaints charge violations of the statute which do not require for their resolution the interpretative language of the regulation. Policy Interpretation No. 1 (for full text, see page 132:01).

Reg. 104.2 Application.

This part applies to each recipient of Federal financial assistance from the Department of Education and to each program or activity that receives or benefits from such assistance.

Reg. 104.3 Definitions.

As used in this part, the term:

(a) "The Act" means the Rehabilitation Act of 1973, Pub. L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 29 U.S.C. 794.

(b) "Section 504" means section 504 of the Act.

(c) "Education of the Handicapped Act" means that statute as amended by the Education for all Handicapped Children Act of 1975, Pub. L. 94-142, 20 U.S.C. 1401 *et seq.*

(d) "Department" means the Department of Education.

(e) "Assistant Secretary" means the Assistant Secretary for Office for Civil Rights of the Department of Education.

(f) "Recipient" means any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(g) "Applicant for assistance" means one who submits an application, request, or plan required to be approved by a Department official or by a recipient as a condition to becoming a recipient.

(h) "Federal financial assistance" means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Department provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel; or

(3) Real and personal property or any interest in or use of such property, including:

(i) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

(i) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(j) "Handicapped person" (i) "Handicapped persons" means any person who has a physical or mental impair-

which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

(j) As used in paragraph (j)(1) of this section, the phrase:

(1) "Physical or mental impairment" means (A) any anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genito-urinary; hemic and lymphatic; and endocrine; or (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(2) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means (A) has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by a recipient as limiting such a limitation; (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment;

(5) has none of the impairments defined in paragraph (j)(1) of this section but is treated by a recipient as having an impairment.

(6) "Qualified handicapped person" means:

(i) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question;

(ii) With respect to public preschool, elementary, secondary, or adult educational services, a handicapped person (i) of an age during which nonhandicapped persons are provided such services, (ii) of an age during which it is mandatory under state law to provide such services to handicapped persons, or (iii) to whom a state is required to provide a free appropriate public education under Sec. 612 of the Education of All Handicapped Act; and

(iii) With respect to postsecondary and vocational educational services, a handicapped person who meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity;

(iv) With respect to other services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(7) "Handicap" means any condition or characteristic that substantially limits one or more major life activities of a person a handicapped person as defined in paragraph (j)(1) of this section.

## Reg. 104.4 Discrimination prohibited.

(a) General. No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.

BASIC  
LAW

(b) Discriminatory actions prohibited. (1) A recipient in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

(2) For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.

(3) Despite the existence of separate or different programs or activities provided in accordance with this part, a recipient may not deny a qualified handicapped person the opportunity to participate in such programs or activities that are not separate or different.

(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of deterring or substantially

impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons, or (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(5) In determining the site or location of a facility, an applicant for assistance or a recipient may not make selections (i) that have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives or benefits from Federal financial assistance or (ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(6) As used in this section, the aid, benefit, or service provided under a program or activity receiving or benefiting from Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance.

(c) *Programs limited by Federal law.* The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or executive order to a different class of handicapped persons is not prohibited by this part.

#### Reg. 104.5 Assurances required.

(a) *Assurances.* An applicant for Federal financial assistance for a program or activity to which this part applies shall submit an assurance, on a form specified by the Director, that the program will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to the Department.

(b) *Duration of obligation.* (1) In the case of Federal financial assistance extended in the form of real property or to provide real property or structures on the property, the assurance will obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) In the case of Federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases the assurance will obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Covenants.* (1) Where Federal financial assistance is provided in the form of the real property or interest in the property from the Department, the instrument effecting or recording this transfer shall contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) Where no transfer of property is involved but property is purchased or improved with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (b)(2) of this section in the instrument effecting or recording any subsequent transfer of the property.

(3) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the covenant shall also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant. If a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on the property for the purposes for which the property was transferred, the Assistant Secretary may, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as he or she deems appropriate, agree to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

#### Reg. 104.6 Remedial action, voluntary action, and self-evaluation

✓(a) *Remedial action.* (1) If the Assistant Secretary finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 or this part, the recipient shall take such remedial action as the Assistant Secretary deems necessary to overcome the effects of the discrimination.

✓(2) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of section 504 or this part and where another recipient exercises control over the recipient that has discriminated, the Assistant Secretary, where appropriate, may require either or both recipients to take remedial action.

✓(3) The Assistant Secretary may, where necessary to overcome the effects of discrimination in violation of section 504 or this part, require a recipient to take remedial action (i) with respect to handicapped persons who are no longer participants in the recipient's program but who were participants in the program when such discrimination occurred or (ii) with respect to handicapped persons who would have been participants in the program had the discrimination not occurred.

(b) *Voluntary action.* A recipient may take steps, in addition to any action that is required by this part, to

overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified handicapped persons.

(c) *Self-evaluation.* (a) A recipient shall, within one year of the effective date of this part:

(i) Evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices and the effects thereof that do not or may not meet the requirements of this part:

(ii) Modify, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, any policies and practices that do not meet the requirements of this part; and

(iii) Take, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

(2) A recipient that employs fifteen or more persons shall, for at least three years following completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public inspection, and provide to the Assistant Secretary upon request: (i) a list of the interested persons consulted, (ii) a description of areas examined and any problems identified, and (iii) a description of any modifications made and of any remedial steps taken.

#### Reg. 104.7 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* A recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with this part.

(b) *Adoption of grievance procedures.* A recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to postsecondary educational institutions.

#### Reg. 104.8 Notice.

(a) A recipient that employs fifteen or more persons shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or profes-

sional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of section 504 and this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its programs and activities. The notification shall also include an identification of the responsible employee designated pursuant to Reg. 104.7(a). A recipient shall make the initial notification required by this paragraph within 90 days of the effective date of this part. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipient's publication, and distribution of memoranda or other written communications.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

#### Reg. 104.9 Administrative requirements for small recipients.

The Assistant Secretary may require any recipient with fewer than fifteen employees, or any class of such recipients, to comply with Regs. 104.7 and 104.8, in whole or in part, when the Assistant Secretary finds a violation of this part or finds that such compliance will not significantly impair the ability of the recipient or class of recipients to provide benefits or services.

#### Reg. 104.10 Effect of state or local law or other requirements and effect of employment opportunities.

(a) The obligation to comply with this part is not obviated or alleviated by the existence of any state or local law or other requirement that, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services or to practice any occupation or profession.

(b) The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for handicapped persons than for nonhandicapped persons.

## Subpart D—Preschool, Elementary, and Secondary Education

### Reg. 104.31 Application of this subpart.

Subpart D applies to preschool, elementary, secondary, and adult education programs and activities that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of such programs or activities.

### Reg. 104.32 Location and notification.

A recipient that operates a public elementary or secondary education program shall annually:

(a) Undertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education; and

(b) Take appropriate steps to notify handicapped persons and their parents or guardian of the recipient's duty under this subpart.

### Reg. 104.33 Free appropriate public education.

(a) *General.* A recipient that operates a public elementary or secondary education program shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap.

(b) Appropriate education. (1) For the purpose of this subpart, the provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of Regs. 104.34, 104.35, and 104.36.

(2) Implementation of an individualized education program developed in accordance with the Education of the Handicapped Act is one means of meeting the standard established in paragraph (b)(1)(i) of this section.

(3) A recipient may place a handicapped person in or refer such person to a program other than the one that it operates as its means of carrying out the requirements of this subpart. If so, the recipient remains responsible for ensuring that the requirements of this subpart are met with respect to any handicapped person so placed or referred.

(c) *Free education.*—(1) *General.* For the purpose of this section, the provision of a free education is the provision of educational and related services without cost to the handicapped person or to his or her parents or guardian, except for the fees that are imposed on nonhandicapped persons or their parents or guardian. It may consist either of the provision of free services or, if a recipient places a handicapped

person in or refers such person to a program not operated by the recipient as its means of carrying out the requirements of this subpart, of payment for the costs of the program. Funds available from any public or private agency may be used to meet the requirements of this subpart. Nothing in this section shall be construed to relieve an insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a handicapped person.

(2) *Transportation.* If a recipient places a handicapped person in or refers such person to a program not operated by the recipient as its means of carrying out the requirements of this subpart, the recipient shall ensure that adequate transportation to and from the program is provided at no greater cost than would be incurred by the person or his or her parents or guardian if the person were placed in the program operated by the recipient.

(3) *Residential placement.* If placement in a public or private residential program is necessary to provide a free appropriate public education to a handicapped person because of his or her handicap, the program, including non-medical care and room and board, shall be provided at no cost to the person or his or her parents or guardian.

(4) *Placement of handicapped persons by parents.* If a recipient has made available, in conformance with the requirements of this section and Reg. 104.34, a free appropriate public education to a handicapped person and the person's parents or guardian choose to place the person in a private school, the recipient is not required to pay for the person's education in the private school. Disagreements between a parent or guardian and a recipient regarding whether the recipient has made such a program available or otherwise regarding the question of financial responsibility are subject to the due process procedures of Reg. 104.36.

(d) *Compliance.* A recipient may not exclude any qualified handicapped person from a public elementary or secondary education after the effective date of this part. A recipient that is not, on the effective date of this regulation, in full compliance with the other requirements of the preceding paragraphs of this section shall meet such requirements at the earliest practicable time and in no event later than September 1, 1978.

### Reg. 104.34 Educational setting.

(a) *Academic setting.* A recipient to which this subpart applies shall educate, or shall provide for the education of, each qualified handicapped person in its jurisdiction with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person. A recipient shall place a handicapped person in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary

aids and services cannot be achieved satisfactorily. Whenever a recipient places a person in a setting other than the regular educational environment pursuant to this paragraph, it shall take into account the proximity of the alternate setting to the person's home.

(b) *Nonacademic settings.* In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in Reg. 104.37(a)(2), a recipient shall ensure that handicapped persons participate with non-handicapped persons in such activities and services to the maximum extent appropriate to the needs of the handicapped person in question.

(c) *Comparable facilities.* If a recipient, in compliance with paragraph (a) of this section, operates a facility that is identifiable as being for handicapped persons, the recipient shall ensure that the facility and the services and activities provided therein are comparable to the other facilities, services, and activities of the recipient.

#### Reg. 104.35 Evaluation and placement.

(a) *Preplacement evaluation.* A recipient that operates a public elementary or secondary education program shall conduct an evaluation in accordance with the requirements of paragraph (b) of this section of any person who, because of handicap, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in a regular or special education program and any subsequent significant change in placement.

(b) *Evaluation procedures.* A recipient to which this subpart applies shall establish standards and procedures for the evaluation and placement of persons who, because of handicap, need or are believed to need special education or related services which ensure that:

(1) Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer;

(2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and

(3) Tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

(c) *Placement procedures.* In interpreting evaluation data and in making placement decisions, a recipient shall (1) draw

upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and (4) ensure that the placement decision is made in conformity with Reg. 104.34.

(d) *Reevaluation.* A recipient to which this section applies shall establish procedures, in accordance with paragraph (b) of this section, for periodic reevaluation of students who have been provided special education and related services. A reevaluation procedure consistent with the Education for the Handicapped Act is one means of meeting this requirement.

#### Reg. 104.36 Procedural safeguards.

A recipient that operates a public elementary or secondary education program shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of section 615 of the Education of the Handicapped Act is one means of meeting this requirement.

#### OCR POLICY INTERPRETATION

##### School Board Members as Hearing Officers

School board members may not serve as hearing officers in proceedings conducted to resolve disputes between parents of handicapped children and officials of their school system. Policy Interpretation No. 6 (for full text, see page 132:03).

#### Reg. 104.37 Nonacademic services.

(a) *General.* (1) A recipient to which this subpart applies shall provide nonacademic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities.

(2) Nonacademic and extracurricular services and activities may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the

recipients, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the recipient and assistance in making available outside employment.

(b) Counseling services. A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities.

(c) *Physical education and athletics.* (1) In providing physical education courses and athletics and similar programs and activities to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors interscholastic, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different from those offered to nonhandicapped students only if separation or differentiation is consistent with the requirements of Part 104.34 and only if no qualified handicapped student is denied the opportunity to complete for teams or to participate in courses that are not separate or different.

OCR POLICY INTERPRETATION

Participation of Handicapped Students in Contact Sports

Students who have lost an organ, limb, or appendage but who are otherwise qualified, may not be excluded by recipients from contact sports. However, such students may be required to obtain parental consent and approval for participation from the doctor most familiar with their condition. If the school system provides its athletes with medical care insurance for sickness or accident, it must make the insurance available without discrimination against handicapped athletes. Policy Interpretation No. 5 (for full text, see page 132:03).

Reg. 104.38 Preschool and adult education programs.

A recipient to which this subpart applies that operates a preschool education or day care program or activity or an adult education program or activity may not, on the basis of handicap, exclude qualified handicapped persons from the program or activity and shall take into account the needs of

such persons in determining the aid, benefits, or services to be provided under the program or activity.

Reg. 104.39 Private education programs.

(a) A recipient that operates a private elementary or secondary education program may not, on the basis of handicap, exclude a qualified handicapped person from such program if the person can, with minor adjustments, be provided an appropriate education, as defined in Reg. 104.33(b)(1), within the recipient's program.

(b) A recipient to which this section applies may not charge more for the provision of an appropriate education to handicapped persons than to nonhandicapped persons except to the extent that any additional charge is justified by a substantial increase in cost to the recipient.

(c) A recipient to which this section applies that operates special education programs shall operate such programs in accordance with the provisions of Regs. 104.35 and 104.36. Each recipient to which this section applies is subject to the provisions of Regs. 104.34, 104.37, and 104.38.

Subpart E—Postsecondary Education

Reg. 104.41 Application of this subpart.

Subpart E applies to postsecondary education programs and activities, including postsecondary vocational education programs and activities, that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of, such programs or activities.

Reg. 104.42 Admissions and recruitment.

(a) *General.* Qualified handicapped persons may not, on the basis of handicap, be denied admission or be subjected to discrimination in admission or recruitment by a recipient to which this subpart applies.

(b) *Admissions.* In administering its admission policies, a recipient to which this subpart applies:

(1) May not apply limitations upon the number or proportion of handicapped persons who may be admitted;

(2) May not make use of any test or criterion for admission that has a disproportionate, adverse effect on handicapped persons or any class of handicapped persons unless (i) the test or criterion, as used by the recipient, has been validated as a predictor of success in the education program or activity in question and (ii) alternate tests or criteria that have a less disproportionate, adverse effect are not shown by the Director to be available.



Whereas all school districts were to have been in compliance with Section 504 of the Rehabilitation Act of 1973 no later than September 1, 1978.

Whereas Attention Deficit Disorder (A.D.D.) children and Attention Deficit Disorder with Hyperactivity (A.D.H.D.) children qualify as handicapped under P.L. 94-142 and Section 504 of the Rehabilitation Act of 1973, under the definition of Minimal Brain Dysfunction.

Whereas 13-20% of the national school population is known to have A.D.D. or A.D.H.D.

Whereas 5-8% of the national school population is known to be of average to above average intelligence with one or more learning disabilities, and qualifies as handicapped under Section 504.

### Learning and Attention Deficit Disorder Educational Resource

Anchorage, Alaska: Page Ford (907) 345-4650

Kenai: Jo-Ann Hugen 283-9472

Juneau: Carmen Riley 789-5633

Mat-Su: Jack Gresham 746-0905

Homer: Cuthy Hankins 235-7325

2. -  
Whereas some school districts are defining compliance of Section 504 as just:

- a) Slingerland - (special - auditory/visual - etc. teaching techniques per the child.)
- b) Modified Primary (12-1/)
- c) Busing to Modified Primary classes

Whereas the LADDER organization defines compliance of Section 504 as:

- a) 50% of the qualified children needing a student teacher ratio of no more than 18 to 1.
- b) 25% of the qualified children needing a student teacher ratio of no more than 18-1 plus academic modifications such as tape recorders, verbal testing, calculators, computers, and other modifications as required to fully meet the needs of each individual child.
- c) 25% of the qualified children needing a student teacher ratio of no more than 8 to 1, a specially trained teacher, a trained aide and academic modifications as required to fully meet the needs of each individual child.

- 2.
- d) Social Skills classes for all qualified 504 children.
  - e) Assistance/Core teams to support and monitor all qualified 504 children.
  - f) in-services for all teachers to identify and appropriately teach children who qualify as handicapped under Section 504.
  - g) busing to all programs needed and specified for all children who qualify as handicapped under Section 504.

Whereas each child is entitled to a free and appropriate education (FAPE). Define appropriate to mean an approach, modifications and programs which would most individually and completely meet each child's specific needs. Define free to mean that if the state and/or districts cannot meet the child's needs fully, that the state or district will cover all costs in placing the child where his needs are fully met.

4.  
Whereas the state and all school districts must broaden their compliance of Section 504 to appropriately meet individual needs by defining "least restrictive environment" to mean "in whatever environment each individual student learns the best"; rather than just meaning mainstream.

Whereas each child's handicap will be individually considered so that discipline procedures appropriate to each qualified child will be implemented, monitored and reviewed on a consistent basis.

Whereas all districts should have procedural safeguards in place.

Whereas the state and each district must hire enough qualified people to test, and implement testing procedures so that all children who qualify under Section 504 of the Rehabilitation Act of 1973 may be identified and receive services.

Whereas all districts will develop and implement I.E.P.'s (individualized education programs) to insure delivery of all required and specified services, modifications and programs to children who qualify as handicapped under Section 504 of the Rehabilitation Act of 1973.

Whereas there must be dedicated funds to create and maintain the aforementioned programs, modifications and services.

Whereas some funding for programs, services and modifications under Section 504 can be dedicated from Federal monies under P.L. 94-142 to meet the needs of minimal brain dysfunction (A.D.D. and A.D.H.D.) children who qualify under both laws.

6.

Therefore, be it resolved that the LADDER (Learning and Attention Deficit Disorder Educational Resource) organization is working towards facilitating the creation and implementation of the aforementioned programs, modifications, services and procedures to be implemented for all minimal brain dysfunction (A.D.D and A.D.H.D.) and above average and average intelligence learning disabled children, no later than the fall of 1990.



*Ker*  
*Distribute*

*6 pages including this one*

*WJK*

DATE March 6, 1990  
FAX TO: Senator Tim Kelly  
FAX 463-4867  
FROM: LADDER  
c/o Nancy Killoran  
17767 Sanctuary Drive  
Eagle River, Alaska 99577

MESSAGE:

As a concerned parent and member of the LADDER (Learning and Attention Deficit Disorder Educational Resource) organization, I am sending the attached materials to you and to the accompanying list of Alaska State legislators.

On the recommendation of Sen. Pat Rodey and Ann Stanholtz I would like to ask that you provide the following list of legislators with copies of this material. Chuck Landers gave me your FAX number but I'm depending on your office to send it the rest of the way.

Please advise these legislators to watch for a resolution on the subject of adequate educational opportunities for ADD children that make up approximately 13 to 15 percent of the school age population in this state and in the nation.

The Seattle office of the U.S. Office of Civil Rights is in Anchorage this week investigating a series of complaints filed by Anchorage parents against the Anchorage School District, charging that their children are not being served by Section 504 Regulations "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance (34 Code of Federal Regulations Part 104). The OCR will also give local residents as well as the Anchorage School District technical assistance in explaining how they should be in compliance with 504 with relationship to ADD children. If the OCR finds that the Anchorage School District is not in compliance and if they do not take adequate steps to become in compliance, federal funding could be withheld from the Anchorage School System.

It is LADDER's understanding that this non compliance with 504 is a statewide problem in Alaska and not just limited to Anchorage, as such it should be of interest and concern to all of Alaska's legislative districts.

## Learning and Attention Deficit Disorder Educational Resource

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Juneau: Carmen Riley 789-5633

Mat-Su: Jack Gresham 746-0905  
Homer: Cathy Henkins 235-7335



The parent's organization called LADDER (Learning and Attention Deficit Educational Resource) was started in 1988 by a small group of parents. We all have two things in common:

1. children with A.D.D., A.D.D.H and/or a low-severity learning disability.
2. all of our children are experiencing school difficulties; emotionally, educationally and socially.

Through extensive research and working closely with ADDH and LD experts we have become aware of special programs that have been created which could aid our children in their unique approach to society and learning. None of these programs are available in the Alaska school system. The LADDER organization's goals are to introduce these programs to the Anchorage School Administration and school board, and to lobby aggressively for their implementation.

Program Descriptions:

1. Social Skills Classes - available in every school (elementary and secondary) to help our children develop "people skills" in the five following areas:
  - a.) classroom survival skills,
  - b.) friendship-making skills,
  - c.) skills for dealing with feelings,
  - d.) skill alternatives to aggression, and
  - e.) skills for dealing with stress and pressures.
2. In-Service Days - for all teachers and school personnel who have contact with ADD/H, L.D. or at-risk children. By recognizing our children and understanding the symptoms and the educational and emotional problems associated with their handicap, all school personnel "encounters" with our children stand a far greater chance of being positive.
3. A Pilot Program - here in Anchorage that mirrors what has been created in other schools in other states to meet the special

**Learning and Attention Deficit Disorder Educational Resource**

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The Anchorage School District has been out of compliance with Section 504 in that:

- a.) they do not have any 504 policies or procedures;
- b.) they did not notify the public of their rights under 504;
- c.) no academic modifications have been made for children who qualify under 504;
- d.) there are no grievance procedures under 504;
- e.) ADD/H / specific learning disabilities were not considered handicapping conditions;
- f.) disciplinary procedures are not modified to the child's handicap.

The LADDER organization is working hard to be part of the decision-making process that will be involved in how ADD/H and bright L.D. children will be serviced under 504. We have made our goals and concerns known to the Anchorage School District administration, the School Board and to selected Senators and representatives. We will continue to do so in as many effective ways as possible until the MOST reasonable accommodation is made for these children in the writing and implementation of 504 policies and procedures.

Elementary grades:

- a.) specially trained teachers with aides;
- b.) a non-distracting classroom environment;
- c.) a teaching approach geared to each child's unique learning style, strengths and levels;
- d.) lowest student-teacher ratio possible.

Secondary level:

- e.) school within a school backed up by assistance teams with a knowledge of each student's needs and learning styles.

- 4. Assistance Teams - in every school made up of trained teachers, school nurses and school psychologists to council and support our children. These teams would also be responsible for implementing the Social Skills classes and monitoring each child's educational progress and emotional well-being.

Prevention has always proven to be more successful and less costly in all ways than a cure.

These programs which have been used in various school systems (public and private) in the lower 48 states continue to successfully contribute to happy, self-confident, controlled children who are learning to the very best of their abilities. Our goals are to have these programs and standards made available to our A.D.D./H. and low-severity L.D. children, as soon as possible.

Enclosed are copies of Section 504 of the Rehabilitation Act. This Federal law which was to be complied with no later than September 1, 1978, specifically applies to our ADD/H and bright L.D. children. Please read this law carefully as well as the enclosed Office of Civil Rights complaints that were filed against other school districts.

## Hyperactive kids slow to get schools' attention

By JOHN WOLFE  
Times Staff

Page Ford says her son Chase, who liked incessantly in the womb, was hyperactive before he was born. Now 8, the boy is a handful not only for his parents but for the Anchorage School District. Years ago, when a pupil constantly stared out the window, teachers blamed the child. Or parents got the blame for being poor disciplinarians. Today, some parents are refusing to take the rap. Nor do they want their children harassed or

### Parents of attention-deficit students challenge board's policy

blamed for what they see as a medical disorder. Ford and a group calling itself LADDER recently learned of a federal law she says requires school districts to provide special programs for students, such as Chase, who have a disability called attention deficit disorder. School officials say they comply with the law and do not ignore the needs of any child. The parents group disagrees. Backed by a legal

advocacy group and a medical specialist, Learning and Attention Deficit Disorder Education Resource has demanded that the school district act quickly to serve attention-deficit children as the law requires. They also have asked the U.S. Office of Civil Rights in Seattle to investigate their complaints against the district. School administrators agree that attention-defi-

cit disorder is real. But they disagree with the approach being demanded by the parents. LADDER wants special programs, including classrooms with no fewer than eight children per instructor. Special Education Director Jim Rich and other school administrators believe children with problems are better off in the regular classroom. Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of any handicap for programs funded by the federal government. According to a fact sheet prepared by the U.S. Ci-

See Disorder, page A-1

## Disorder

Continued from page A-1

lice of Civil Rights, "handicap" includes "specific learning disabilities such as perceptual handicaps, dyslexia, (and) minimal brain dysfunction."

The law guarantees a free appropriate public education for the handicapped. LADDER and school officials differ in their interpretation of "appropriate." The regulations also require that, "to the extent appropriate," such children be educated with those who are not handicapped.

"That's probably where the biggest bone of contention is," said Rich. "We start with the assumption (they) can function in the regular classroom."

Ford said so-called mainstreaming is not appropriate for many ADD children and that self-contained classrooms would be better.

"The professional literature would not necessarily support that," said Rich. "Their biggest problem is social skills. You don't learn them by putting them with other kids who don't have social skills."

But ADD specialist Dr. Kenneth Marceau of Anchorage said a fourth of all children with the disorder would do best in self-contained classes.

School administrators said they have good programs for helping pupils with educational problems.

Bob Christie, assistant superintendent for instruction, said standard procedure calls for a consultation with parents and a school psychologist, testing, monitoring behavior and assessing medication needs.

Rich said actual district programs for problem children include "Modified Primary" classes for children not ready for first grade and the Sift/Blend Programs, which are designed to help pupils overcome organizational difficulties such as forming letters.

Since Ford discovered Section 504 in December and brought it to the district's attention, school officials have arranged a number of workshops for principals on attention deficit disorder, and have arranged with the Office of Civil Rights for technical assistance. Section 504 is an OCR official from Seattle are in Anchorage later this month.

But Ford says the school should first be dragging its feet, and is not properly utilizing self-contained or attention deficit specialists as a means of service.

LADDER went before the Anchorage School Board Jan. 8 to demand the district create a formal program for attention-deficit youngsters. "Aspects of this law have been ignored or completely overlooked by the Anchorage School District," group member Carolyn Ludwig told the board.

Ludwig said districts were to have complied with the law beginning in 1978. She and Ford gave board members written background on the problem during the meeting and demanded action within a week.

More than a month later, most of the seven school board members seem to have forgotten that the group accused them of not complying with federal law.

"I don't know what you mean by 504," said board member Jean Buchanan, when asked about the issue.

Of the four members contacted during the last two weeks, only vice President Sharon Richards indicated she had read the group's material and knew the principal training had been arranged.

"We count on our professional people to stay up on the stuff," Richards said. "If (LADDER members) are suggesting definitely we're not, we need to hear from our people."

Christie and the district's 504 coordinator, Equal Employment Opportunity Director John Soudreau, said they observe the district's policies.

Soudreau described his role as a "watchdog to make sure (Christie) and his staff implement (programs) according to the law." But he said he did not know if policies applied to the law or not.

The only way he fulfills his watchdog function, he said, is if he gets a complaint or a request. "I met with the group, but... I have seen no requests," he added.

Stacy Gilette, of Advocacy Services, disagreed with the district's claim that they comply with the federal law, and says waiting for a complaint is not appropriate.

"Parents don't know about it, so they don't complain," said Gilette, whose group offers legal assistance on behalf of developmentally disabled children but has had deals with attention deficit disorder.

Special Education Director Rich said the school district has been dealing with attention deficit disorder for many years. But he acknowledged that ADD is a disability that isn't recognized from special education programs, except at students where they qualify by being more than two years behind their grade level.



8-year-old Chase Ford suffers from attention deficit disorder.

## Children suffering from distractible disability commonly misdiagnosed

By JOHN WOLFE  
Times Staff

Chase Winter Ford is a handsome, bright, kindly haired 8-year-old with blue eyes, a mischievous smile and attention deficit disorder.

Sitting in his parents' south-Anchorage living room after playing a video game with a friend, he talked to a reporter just long enough to buy paying attention. Then Chase turned his head toward another room where his friend was still playing. "I think he's playing Nintendo," Chase said, holding a fair bet.

Any little boy might do the same, but his distractibility is a characteristic of attention deficit disorder, said Anchorage physician Kenneth Marceau, an ADD specialist.

His disability does not involve missing time or retardation, just a heightening of what young boys are known for anyway — short attention spans. So the disorder is often not recognized and frequently misdiagnosed.

Chase, in the second grade at Huffman Elementary School, said it best the way: "They don't play with me as much, and I'm busy by me around."

He also has problems with the teachers. "You have to do too much work, too much running, and not kinds of stuff. You get a little bored with it, and the teacher gives you more more more," he said.

Lady's A boys will be boys and it's boy! Chase's mom, Page Ford, and other parents of ADD children say it is not that simple, although sometimes it is hard to persuade other adults and teachers.

The two fathers, once it, Chase are counted. They say, by an excessive distractibility, an attention span much shorter than most children's and a talent for it to act impulsively.

"As you sit around a room or a table, there are thousands of stimuli," said Marceau. Most

people instantly organize the stimuli and pay attention to what is important. ADD children can't do that well.

"They tend to treat all stimuli equally," she said, and they appear to react helplessly on the scene.

Impulsive acts can be a part of hyperactivity. ADD until recently was known as hyperactivity, but Marceau said doctors now realize that about a fourth of all children with the disorder are not hyperactive.

The mother of a recent inpatient of ADD just one said she had never noticed a problem with her school for behavior problems, from being jealous outrage from a classmate around her.

Most of the mothers did not want their names printed, or the names of their children.

The other boy playing Nintendo at Chase's house, who we'll call Judy, was diagnosed a seventh grader who said his name was "because I'm different. I act different."

The boy said he is finishing seventh grade because he doesn't get a chance to study. He would, yet his mother said he gives up at school at age 8.

Frequent actual detentions — Chase admitted 127 — as well as a struggle to succeed and be liked, work on the youngster. His parents said the boy, the stress made so impulsive tendencies and episodes of psychotic violence, said his mother.

"I think a child's high attitude, just when it's important to be cool, trying to be nice.

"If I do a little wrong — that's how you can run for me — I just get angry," said Judy. "I've been known to grab the paper and run it to school or to school or school."

He was angry because he had to be a good boy. I'm probably the only one who has ever in the world. I feel like, why not? Why do I have to be born with this stuff — what's the deal?"



THAD L. WOODARD M.D. & ASSOCIATES  
BIRTH THROUGH ADOLESCENT CARE

INFORMATION ABOUT ATTENTION DEFICIT DISORDER AND  
HYPERACTIVITY

Prepared By:  
Rosebeth R. Marcou, MD  
January 15, 1988

Thad L. Woodard, MD  
PEDIATRIC AND  
ADOLESCENT CARE  
CHILDHOOD ASTHMA

Many parents wonder if their child is hyperactive. Frequently this suggestion is made by the youngster's teacher. Many terms have been used by medical personnel to describe the diversity of problems seen with hyperactivity. The diagnostic label has evolved so that it describes the entire group of findings which these youngsters demonstrate. The current terminology is ATTENTION DEFICIT DISORDER with or without HYPERACTIVITY. Just to simplify things, I'll use the abbreviation ADD throughout this paper.

Rosebeth R. Marcou, MD  
LEARNING  
AND  
BEHAVIOR DISORDERS

Attention, particularly selective attention which I'll talk more about later, is a developmental function. This means that it is entirely appropriate for a two-year old to have poor attentional skills. Actually, in order for them to learn all the things they need to from their environment, they have to rapidly shift the focus of their attention from one thing to another. Children's attentional skills usually improve throughout the toddler and preschool years. Somewhere between the ages of five and seven, most children have acquired adequate attentional skills to function in a classroom environment. Their attention continues to develop after this time. Now, on to the concept of selectivity.

Bonnie Anderson, CPNP  
PEDIATRIC  
AND  
ADOLESCENT CARE

Mary Lou Hanson, CSNP  
COUNSELING ON LEARNING  
AND  
BEHAVIOR DISORDERS

In daily life, each of us confronts more data than we can possibly interpret, store, and use. We also find far more activities in which to take part, than we can possibly pursue. As a result, selection is necessary. From minute to minute, we choose material to pay attention to, and activities to pursue. Children, as they advance in school, become increasingly able to concentrate on the most important information, while rejecting the unimportant. They become increasingly

able to select from among a group the most rewarding activities, while rejecting less worthwhile options.

If a child does not acquire this ability, underachievement in school is a common outcome. They frequently concentrate on inappropriate stimuli (information), and have too great a tendency to participate in activities that are purposeless. They are said to have and ATTENTION DEFICIT DISORDER. They also have a deficit of intention.

There are many signs of this problem, not every child will have every symptom. Most children with ADD will have both attentional and intentional weaknesses. First, I will consider the weaknesses of selective attention.

### Selective Attention

There are three general characteristics of youngsters with weak selective attention. They are: erratic or inconsistent focus of attention; distractibility; and reduced response to feedback.

Imagine a student sitting in class. The teacher has just finished writing some sentences on the chalkboard. The student first must be awake and alert enough to be aware that the teacher has written something on the board. The student then will become aware of a variety of other stimuli (things besides the work he's supposed to do that he might think about) such as what he'll be eating for lunch, other children, or a TV show from last night. The student then has to determine what will get his primary attention, and focus on the sentences on the chalkboard (not on the calendar or other stray marks that may be on the board). This process of filtering out allows the student to tune out other noises in class or something happening out in the hall. Having focused his attention on one thing, he must then decide what to do with the material he's focusing on.

Luckily, these are automatic steps for many of us. For the child who has ADD, these are some of the inappropriate things which may take place as they sit in class working on the sentences.

Erratic or inconsistent focus:

1. The child has difficulty focusing on precise details and has a preference for the big picture.
2. The child focuses on information that is not important; and tends to learn "incidental" rather than "crucial" information.
3. The child is likely to tire easily when expected to concentrate and may have other sleep problems.
4. The child either gives up too easily or stays with tasks too long. Overall, the wrong amount of time is given to tasks.
5. The child is not thorough and "flexible" in thinking about a task.

6. The child has unpredictable patterns of concentration.

Distractibility:

- 1. Tendency to focus on and remember unimportant things they have seen.
- 2. Tendency to not listen well or to listen to unimportant things, like a car driving by outside, rather than what the teacher is saying.
- 3. The child may have an increased need to constantly touch and feel things. They may have a strong sense of smell.
- 4. The child day dreams. Just a single word, like "dog" may lead them to associate in their mind everything they know about dogs. They often have rich imaginations, but sometimes they "free associate", and say or think about things that are not really related to what is going on.
- 5. The child may be distracted by their appetite, for food, social interaction, or an adult's time. They are hard to satisfy and want things right away. They think a lot about what's coming next, and may get bored easily. Sometimes they do things to provoke attention.
- 6. The child is often distracted by his peers, and has trouble filtering out social inputs to focus on tasks.

Reduced response to Feedback:

- 1. The child makes careless errors and does not check his work. He is very hard to discipline, and often repeats mistakes after he's been corrected.

Selective Intention

Now that the child has focused their attention, they now have to turn their concentration to completing the task that is expected of them. This requires selectivity of their intention to complete a task.

In order to be selective the youngster must first determine what their goal should be. They must then consider the different methods of achieving the goal, and think what the outcome of each method might be. They must then select the best way of achieving the goal. They have to control those actions which are likely to fail, waste energy, interfere, or produce poor outcomes. They must then stick with the task an appropriate length of time. Finally, they must compare their action with their original plan to see if they can make changes if necessary and they can.

If the youngster has difficulty with the process of goal setting, it is likely that one of these processes is interfering with their selective intention.

1. In school and social settings, the youngster may wish to express certain ideas or feelings. If they don't think about the consequences of what they say, they may say things that are not understood by others. This is referred to as verbal disinhibition (saying the first thing that comes into your head!). Often, these statements can be embarrassing or alienating.

2. Similarly, the child may not be able to select his behaviors wisely. They are impulsive and don't plan their behavioral response. They're often seen as aggressive, although their behavior is not pre-meditated.

3. Their school work may be done impulsively. They work much too quickly and are not accurate. They "look before they leap" and don't plan their work. Even if they do plan, they abandon their plan quickly. Sometimes they get more impulsive at the end of a task.

4. The quality of the child's work will vary from hour to hour, day to day, or season to season. They are inconsistent in their test scores, work completion, and behavior. To some extent, this is related to their degree of motivation. They can only work well at things they really enjoy. Often, because they are so inconsistent, teachers and parents will accuse them of being lazy. In fact, they just need a greater degree of motivation to complete a task.

5. When performing tasks, they demonstrate extraneous movements of the mouth, hands or other parts of the body. Called associated movements, they represent a lack of selection of muscle groups. These types of movements are commonly seen until the age of 7 or so. When they are seen after this age, they may indicate a lag in neuro-maturation. They are often seen in children with learning or attentional problems.

6. They many have an inappropriate activity level. Really, it isn't how much activity the child demonstrates that's important, it's the quality of that activity. Some children are hyperactive, others normally active and others are hypoactive. For some children, the high activity level actually helps them to concentrate better. Many adults, for example, can listen better when they are a little fidgety (tapping their knee or playing with a pencil).

7. The child may have difficulty sticking with a task but may also have trouble making the transition to a new task. Sometimes they perseverate, stay at something for too long. Sometimes they will tire easily when expected to concentrate.

8. The child does not judge the quality of the work they are doing. When someone else judges their work, or tries to discipline or correct them, they are not responsive to feedback. They may also be insensitive to social feedback cues.

### The Medical Picture of ADD

The first few pages of this handout have described the common symptoms of ADD. Now, we'll look at how a child with ADD is likely to first present to their parents or teachers.

Not all attention deficits are the same. Some youngsters with ADD appear to have signs of the problem only in certain environments. If a teacher's style is mismatched with the student's, they may become inattentive as a result. If the expectations of an environment are too sophisticated, they may just turn off. This is referred to as a "situational" attention deficit. Other youngsters will have attentional problems because they are preoccupied by emotional concerns or medical problems. If they are worried or depressed, their attention may be focused on other things. Also, if they cannot process the material that is being presented because of some type of learning disability, they also cannot focus their attention well. These are referred to as secondary attention deficits. Some youngsters have attentional problems in all environments and settings. They can be said to have a primary attention deficit.

While there is not set pattern for the behavior of children with ADD, some fall into typical behavioral patterns even as infants. They'll be difficult babies and hard to satisfy. They may be hard to work into a schedule. As toddlers, they are unusually overactive, cranky, irritable and hard to satisfy. They may have hard time adjusting to preschool. In elementary school, they have trouble focusing their attention, are distractible, impulsive, inconsistent and possibly hyperactive. In adolescence they are restless, inconsistent, and have memory problems. In young adulthood, they are vulnerable to unemployment, car accidents, substance abuse and marital instability.

Once the youngster is identified as having an attention deficit, therapy aimed at enhancing their assets, and helping them to learn to live with their deficits guarantees them a chance at a successful future. The same qualities that give them trouble in elementary school can become real assets in adulthood. Their overactivity can be positively channeled and they will be seen as energetic adults. Their daydreaming can become tremendous creativity, etc. Therefore, the goal is to identify these youngsters appropriately, and give therapy so that they can maintain their self-esteem and learn to make the best of their own strengths and weaknesses.

ADD is seen about 5 times more frequently in boys. This is true for their learning problems as well. When it is seen in girls, it is often identified at a later age. This is because the girls are less likely to be hyperactive, and therefore are not behavioral problems in the early years of school. They are identified because they have focused symptoms in later years.

### Assessment

Several factors make it difficult to diagnose ADD. First of all, the children are inconsistent. Secondly, they may do much better when tested one-to-one. Also, factors such as health, sleep, etc. always have an impact on how well the child attends. With these limitations in mind, here are the things that are done to determine if a child has ADD.

1. Direct observation, usually in school. Unfortunately there will be a lot of variability between observers.
2. Direct testing of attention. This is best done by looking at the child's ability to selectively attend when presented with a variety of tasks, both visual and verbal in nature.
3. Questionnaires to obtain information about present and past behaviors.

Often, after getting opinions from the school, parents and examiner, there will not be a unanimous agreement. Usually, the diagnosis can be made when the behaviors are observed in two of the three environments. It is important that an evaluation of a youngster for ADD also considers the youngster's learning ability and style. Many youngsters with ADD have other learning problems, particularly related to language and memory.

Medical problems such as seizures, visual or hearing problems and other neurological problems need to be considered. Also, psychological problems such as depression and conduct disorders may also have similar signs. It should be determined whether the attention deficit is primary, secondary or situational.

### Management

There are four basic areas that need to be targeted in helping a youngster with ADD. They are: cognitive style, socialization, behavior and the child's feelings about himself.

The first step in managing a youngster with ADD is understanding the problem. Hopefully, this paper has given you more appreciation of the various problems these youngsters face. It is very important that the youngster understand themselves. They must learn that they are not dumb, lazy or bad. It should be explained to them in their own terms and in such a way that they don't feel hopeless. They have to learn that while this problem is not their fault, they are still accountable for what they do. There must be consistency in approach and understanding among all those who work with the youngster.

The child must learn to function more appropriately at home and school. Behavioral modification plans can alter some of the inappropriate behavioral "choices" made by these children. These plans include the use of tokens as rewards and highly consistent

shaping to develop new behaviors. These plans work best on a limited group of behaviors at a time. It is important to not expect miracles, the goal should be very gradual improvement. Classroom accommodations are also important. These can relate to class structure and size, teaching methods, scheduling, testing methods used, and expectations. Various techniques can also be taught to the child to help them to think, and learn in a more thoughtful way. This is known as cognitive training.

The last two pages of this report contain general suggestions for working at home and in school with youngsters with ADD. They are not intended to be comprehensive, but give an idea of how to begin approaching the task of management.

Counseling is often beneficial for youngsters with ADD. If the counselor is knowledgeable about ADD, they can help the youngster develop better self awareness and problem solving skills.

In some children with ADD, medication is useful in addition to other management strategies. Stimulant medications, in particular, have been widely used in these children. These include Ritalin, Dexedrine and Cylert. They appear to work by selectively stimulating that section of the brain which allows attention to be focused appropriately. They have been found to improve focus, maintain attention, reduce impulsiveness, and enhance scanning behaviors. They may also reduce activity.

These drugs have relatively few short term side effects, including insomnia, decreased appetite, headache, and irritability. There are even fewer long term side effects. Fear growth has been a concern, but is not seen in children who are given the medication only on school days.

Most parents are concerned, as they should be, about giving the child the idea that a pill can solve their problems. It is important that the child understand why they are taking medication and what it can and can't do for them. As one child described it to me, "It's like riding a two-wheeled bike for the first time, you need a little push but you have to be the pedaling yourself. Ritalin is the little push."

Medication is never the whole answer. Any effective program for the child with ADD needs to take into account their home environment and social interactions. Their needs must be met by all the aspects of their program, not just the hyperactivity. With appropriate therapy and medication, these youngsters will learn to become excellent, successful, and happy people.

GOOD LUCK

## General Considerations for the Home Management of Children with Attention Deficits

1. Just as they need educational success, children with attention deficits must have sufficient personal success in their lives. Their strengths must be recognized and used, even if the talents do not fit parental hopes or expectations. Artistic, athletic or creative ability of any kind must be discerned and developed. Sometimes children resist developing their strengths. Every effort should be made to foster strengths, even in the face of opposition.

2. Children should not be expected to recover overnight. Parents should try not to use threats such as "if you ever do this again, you will be in big trouble." Instead, they should emphasize steady improvement. They should temper criticism with praise every day. The goal should be to decrease progressively the frequency and severity of the maladaptive behavior.

3. Parents should not attempt to deal with all of the child's undesirable traits at one time. They should select one or two traits that are most in need of careful management and work on these primarily.

4. Every effort should be made to shape behaviors without trying or expecting to totally eliminate them. Try to limit them rather than extinguish them.

5. Children with attention deficits will benefit from predictability and structure at home. Distinct schedules for getting up in the morning, doing homework in the evening, and fulfilling daily obligations will be beneficial.

6. Parents must have similar policies about and reactions to the child's various actions. This requires considerable discussion and planning by the parents.

7. Children with attention deficits often have difficulty completing homework. A preset routine for work each evening (except weekends) helps establish good study habits. If they have no homework, the child should at least sit at a desk and work in a workbook or perform some other intellectual tasks. Their siblings should be working at the same time. There should be no TV or other distractions permitted. If possible, children should not work in their bedrooms. This is too distracting.

8. Have realistic expectations for the child. Plan ahead to try to avoid potentially difficult situations. If a new or challenging situation is anticipated, discuss it fully with the child well in advance. Discuss possible outcomes of various types of behavior.

## General Suggestions for the Classroom Management of Youngsters with Attention Deficits

1. The youngster should have preferential seating as close as possible to the teacher.

2. The teacher should have a private understanding with the child. They should have periodic one-to-one meetings to discuss the child's attention deficits. When a child appears to be tuning out or acting impulsively, the teacher can provide a confidential signal as a way of letting the child know that the problem is going out of control.

3. The child should not be publicly humiliated in the classroom. It is inappropriate to call on them while their attention is drifting or be too critical of them in front of their peers. Such humiliation is one of the major causes of secondary anxiety and deterioration of self esteem.

4. The teacher may need to divide the work load into small chunks. Groups of problems could be given with small breaks in between, rather than expecting the completion of all problems in one sitting.

5. The child may benefit from doing errands. This helps break their day into smaller units and allows for some diversion of overflow energy.

6. Every effort must be made to discover ways the child can appear successful to themselves and their classmates. Art work, story telling, physical prowess or other indications of mastery must be discovered and displayed prominently so that these children do not come to feel deprived of success.

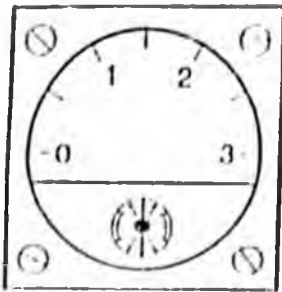
7. Often the child can benefit from regular, non-accusatory feedback from the teacher. Moralistic terms such as "bad" or "good" should be avoided. It is better to inform a child that his or her problems is "out of control" than to invoke moralistic values.

8. Traditionally, a highly structured classroom has been considered better than an open classroom for children with attention problems. These children do thrive best on predictability and routine, and their most disorganized behavior is likely to occur during free time. However, many open classrooms offer a great deal of structure and predictability. Classroom routine should not be so rigid and predictable as to stifle the child's inventiveness and creativity. Consistency in methods, feedback and daily routine is more important than the type of classroom.

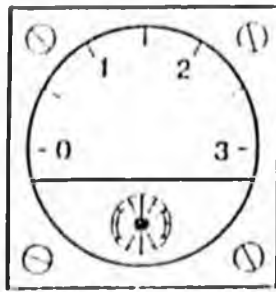
*Highly visible, readable - sense of control by 30 minutes, volume, (all right hand's "0" only) - they can't be selective about it*

# ATTENTIONAL CONTROL SYSTEMS (THE CONCENTRATION COCKPIT)

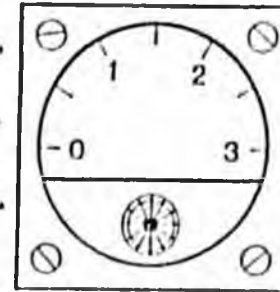
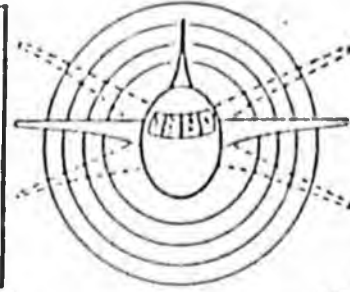
*They can't be selective about it when it is important to be careful*



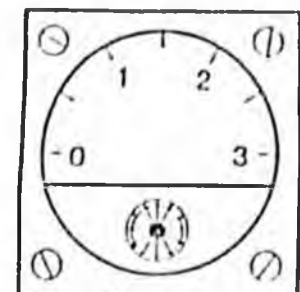
**MOOD CONTROL**  
(Not Getting Much Too Sad or Much Too Happy at the Wrong Times)



**BEHAVIORAL CONTROL**  
(Thinking Before You Do Things)



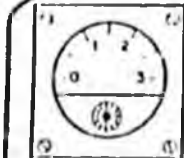
**MOTOR/VERBAL CONTROL**  
(Not Wasting Movement and Talking)



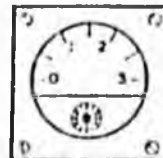
**SOCIAL CONTROL**  
(Tuning Out Other Kids When You Need To)



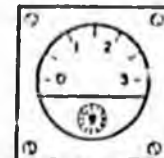
**DREAM CONTROL**  
(Not Daydreaming)



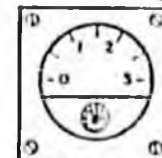
**CONSISTENCY CONTROL**  
(Keeping Up Good Work)



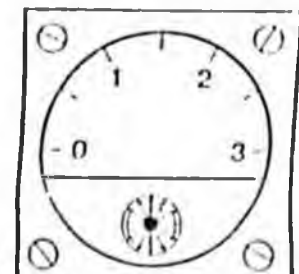
**TEMPO CONTROL**  
(Not Using Things So Fast)



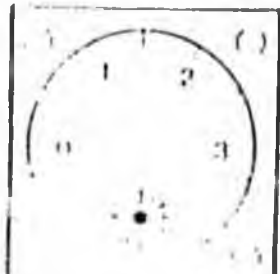
**MOTIVATION INPUT CONTROL**  
(Doing Things That Aren't Exciting)



**AROUSAL CONTROL**  
(Staying Awake While Working or Listening)



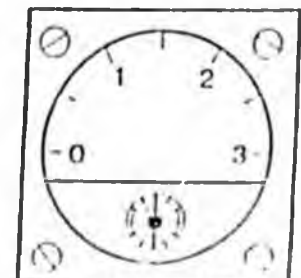
**MEMORY CONTROL**  
(Remembering Important Things)



**SELECTIVE FOCUS CONTROL**  
(Staying Tuned In to the Most Important Things)

**MASTER CONTROL**

**SELECTIVE FOCUS CONTROL**  
(Staying Tuned In to the Most Important Things)



**APPETITE CONTROL**  
(Not Always Wanting Things and Looking Ahead)

Balance Sheet  
For Implementing Stimulant Therapy  
In Children With Attention Deficits

TRADITIONAL ATTENTION DEFICIT MEASURES

Potential Deterrent	Parameter	Potential Indicator
Not Evident <input type="checkbox"/>	Impulsivity	Pronounced <input type="checkbox"/>
Not Evident <input type="checkbox"/>	Sleep-Arousal Problems	Pronounced <input type="checkbox"/>
Not Evident <input type="checkbox"/>	Inconsistency	Pronounced <input type="checkbox"/>
Not Evident <input type="checkbox"/>	Overactivity Fidgetiness	Pronounced <input type="checkbox"/>
Not Evident <input type="checkbox"/>	Distractibility	Pronounced <input type="checkbox"/>
Not a Problem <input type="checkbox"/>	Behavior	Disruptive <input type="checkbox"/>
Not Evident <input type="checkbox"/>	Academic Failure	Pronounced <input type="checkbox"/>
Not Evident <input type="checkbox"/>	Urgency	Pronounced <input type="checkbox"/>
Available <input type="checkbox"/>	Additional Home Interventions	Not Available <input type="checkbox"/>
Available <input type="checkbox"/>	Strong Support at School	Not Available <input type="checkbox"/>
Poor <input type="checkbox"/>	Prior Medication Response	Good <input type="checkbox"/>
Unmanaged <input type="checkbox"/>	Associated Processing Problems	Managed <input type="checkbox"/>
Reluctant <input type="checkbox"/>	Parental Attitudes	Positive <input type="checkbox"/>
Snorts, Grunts <input type="checkbox"/>	Involuntary Movements	None <input type="checkbox"/>
Severe <input type="checkbox"/>	Depressive Episodes	Mild, Moderate <input type="checkbox"/>
Reluctant <input type="checkbox"/>	Child's Attitude	Willing <input type="checkbox"/>
Highly Disorganized <input type="checkbox"/>	Home Settings	Organized <input type="checkbox"/>
Less Than 5 <input type="checkbox"/>	Age	6 to 13 <input type="checkbox"/>
Poor <input type="checkbox"/>	Likelihood of Compliance	Good <input type="checkbox"/>
Poor <input type="checkbox"/>	Insight into Problems	Good <input type="checkbox"/>

## YOUR RIGHTS AS THE PARENT OF A HANDICAPPED CHILD

The following information is a detailed statement of parental rights. The citations at the left side of the page refer to the specific section of the Federal Regulations. In the interest of simplicity, they have been paraphrased here.

### "Notice"

As a parent you have a right to:

- 300.504(a)(1)(2) ... be notified before the school proposes to initiate or change the identification, assessment, or placement of your child or the provision of a free appropriate public education on grounds that he or she has a handicapping condition; or rejects your request that these actions be taken.
- 300.506(b)(1)(2) ... receive all such notices in writing and in the language you speak and understand best. If there are parents whose native language is not a written language, the school officials must see that the notice is explained to them
- 300.505(c)(1)(2)(3) orally or in a mode of communication they understand, that they understand the information they have been given, and that there is written evidence that this requirement has been met.
- 300.505(a)(1) ... a full explanation of all of the procedural safeguards available to parents.
- 300.505(a)(3) ... be notified of each testing procedure, test, record, or report the school will use as the basis for any decision regarding your child.
- 300.505(a)(2) ... a description of the plan for your child with an explanation of why it is recommended, what options were considered, and why those options were ruled out.
- 300.505(a)(4) ... be informed of any other relevant factors that school officials considered in their decision.

The notice you receive must also include all of the information contained in this packet.

### "CONSENT"

Your written consent is necessary before the school may:

- 300.500(a)  
300.504(b)(1)(i) ... test your child individually with any tests that are not generally given to most other students.
- 300.504(b)(1)(ii) ... place your child in a special education program for the first time.
- 300.500(a) Before your consent is given, the school must explain in your native language what you are agreeing to, and the school must be sure that you understand
- 300.500(b) ii. The consent form must describe what you are agreeing to, list which of your child's records (if any) will be released, and specify who will receive them.
- 300.500(c) Your consent is to be given freely, and you may withdraw it at any time.
- 300.504(b)(2) If you do not give your consent, your child's basic right to attend school and participate in school activities will not be affected by your refusal.
- 300.504(c)(1) If you refuse to give your consent, and the school administrators believe what they propose is in your child's best interest, the school may request a hearing.
- 300.504(c)(2)(i) An independent hearing officer would then decide whether your child should be tested or placed without your consent. You have a right to attend this hearing and tell why you refuse to give your consent. You also have a right to appeal
- 300.504(c)(2)(ii) the decision to the State if the procedure was a local hearing.

### "EVALUATION AND PLACEMENT PROCEDURES"

300.531 Before your child receives any special education services, a full and individual evaluation must be conducted. This means your child will be given specific tests which are not usually given to most school children.

In this circumstance your child has a right to:

- 300.532(a)(1) ... be tested in the language which he or she speaks and understands best.
- 300.530(b) ... be tested in such a manner that results are not affected by race or culture.

- 300.532(a)(2)(3) ... be tested by qualified professionals using valid tests which are given according to proper instructions.
- 300.532(e) ... be evaluated by a group of professionals including at least one teacher or specialist who is knowledgeable about the kind of problem your child is thought to have.
- 300.532(f) ... be tested in all areas related to his or her suspected problem.
- 300.532 (b) ... be tested through procedures which determine specific areas of educational need, not just an intelligence ("IQ") test.
- 300.532(d) ... have his or her educational program determined on the basis of more than one test.
- 300.534(b) ... receive a complete re-evaluation every three years, or more frequently if necessary or if requested by you or your child's teacher.
- 300.534(a) ... have his or her individualized education program (IEP) reviewed annually.
- 300.532(c) Tests must be given to children with impaired hearing or vision, or restricted ability to move or speak, in such a way as to measure the child's potential ability or what the child has learned and not the degree of impairment (unless, of course, measuring impairment is the purpose of the test). When looking at test results and deciding on the best program for your child, the school must:
- 300.533(a)(1) ... collect information from many sources,
- 300.533(a)(2) ... guarantee that this information is documented and carefully considered,
- 300.533(a)(3) ... insure that the placement decision is made by a group of professionals including some who know about your child and are professionally capable of interpreting the test results and relating those results to appropriate placement options.
- 300.533(a)(4) ... insure that the placement decision is made in such a way that your child's education will be, to the extent appropriate, with children who are not handicapped.
- 300.533(b) If it is determined that your child is handicapped and is in need of special education and related services, an IEP must be developed. \*

\* An IEP is an individualized educational program which must include a statement of your child's present levels of educational performance, a statement of annual goals and short term objectives for your child, a statement of the specific special education and related services to be provided, the extent to which your child will be able to participate in regular education programs, and the projected dates for beginning the special education and how long it is expected to continue. It must also include an objective way of determining, at least annually, whether your child is achieving the short term objectives that were set. This IEP must be decided upon in a meeting which includes a representative of the school your child attends (this must be someone who is qualified to provide or supervise special education,) your child's teacher, you as the child's parent or parents, and your child if that is appropriate. Either you or the school may have others participate. If you wish additional information about your child's IEP, you should ask your child's teacher or an official of your child's school.

#### "INDEPENDENT EDUCATIONAL EVALUATION"

- 300.503(a)(b) If you do not agree with the evaluation provided by the school -- that is, if you don't think they gave the right tests or reached the right conclusions -- you may have an independent educational evaluation conducted at public expense. An "independent educational evaluation" means that your child will be tested by
- 300.503(a)(3)(i) a qualified person who is not employed by the school your child attends. The school will either pay for a private evaluation or will arrange for one at no cost
- 300.503(a)(3)(ii) to you. However, the school also has a right to a hearing, to show that its evaluation was appropriate. If the hearing officer decides that the school's evaluation was appropriate, you still have the right to an independent educational evaluation, but not at public expense.
- 300.503(b) The school must inform you, upon your request, where independent evaluations are available. If you have an independent evaluation conducted at your own expense, the results of this evaluation:
- 300.503(c)(1) ... must be considered by the school in any decision regarding your child's education, and
- 300.503(c)(2) ... may be presented as evidence in a formal hearing.
- 300.503(d) If an independent evaluation is requested by a hearing officer as part of a "due process hearing," the evaluation must be at public expense.

300.503(e) Evaluations conducted at public expense must meet the same criteria (qualifications of examiner, etc.) as those conducted by the school.

#### RECORDS

You have a right to:

- 300.565 ... receive, upon your request, a list of the types of education records kept on your child, where they are maintained, and how you can get access to them.
- 300.502(a)(b) ... inspect and review any of your child's records with respect to identification, evaluation and educational placement of your child, and
- ... with respect to the provision of a free appropriate public education.
- 300.562 (a) The school must comply with your request to do so:
- without unnecessary delay
- before an IEP meeting or hearing
- within 45 days
- 300.566(a) The school may charge a fee for copies of records which are made for parents if the fee does not prevent the parents from exercising their right to inspect and review those records.
- 300.566(b) The school may not charge to search for or collect the information.
- 300.562(b)(1) ... have someone at your child's school explain or interpret any item in your child's records
- 300.562(b)(2) ... receive copies of the records if this is the only way to insure that you will be able to review and inspect them. The school may charge a fee for the copies, if such a charge does not prevent you from inspecting and reviewing the records
- 300.562(b)(3) ... have a representative inspect and review the records
- 300.562(c) The school may assume that you have the authority to inspect and review your child's records unless it has been informed that you do not have this right (because of some legal action such as custody, for example).
- 300.563 Each participating agency shall keep a record of parties obtaining access to education records collected, maintained, or used (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.
- 300.567(a) If you feel that any statements in your child's records are wrong, misleading, or violate the privacy or other rights of your child, you may ask the school to change them. The school must either change such statements in a reasonable
- 300.567(b) period of time or formally refuse to do so. If it refuses, school officials
- 300.567(c) must inform you of their refusal and advise you of your right to a hearing on the matter.
- 300.568 If you request such a hearing, the school must hold one.
- 300.570 This hearing does not necessarily follow the process described in the "hearing" section of this explanation of rights. The hearing may be conducted by any school official who does not have a direct interest in its outcome.
- 300.569(a) If the hearing is decided in your favor, school officials must change the information and inform you in writing they have done so.
- 300.569(b) If the information is held to be accurate, you have the right to add your own statement to the record.
- 300.569(c)(1)(2) Your statement must be kept as long as the contested part of the overall record is kept; and if that record is shown to anyone, your statement must also be shown.

#### CONFIDENTIALITY OF INFORMATION

- 300.572(a) The school is responsible for protecting the confidentiality of your child's education records by:
- 300.572(b) ... naming the individual who is responsible for insuring the confidentiality of records,

- 300.572(c) ... guaranteeing that all persons who collect or use such information receive training in the State's policies and procedures regarding confidentiality.
- 300.572(d) ... keeping for public inspection a list of those employees who are permitted access to these records.
- 300.564 ... permitting parents to see only that information which relates to their own child when records contain information on more than one child.
- 300.571(a)(1) ... requiring your consent before your child's education records are given to anyone not involved in your child's education.
- 300.571(a)(2) ... requiring your consent before using your child's records for any purposes other than those related to providing special education and related services.
- 300.571(c) However, states may have policies and procedures which apply in the event that you decline to give this consent and that the school feels the records should be given to the person who requested them. These procedures could allow the school to send copies of the records to the requesting person or agency, under certain circumstances, despite your objection.
- 300.573(a)(b) ... informing you when confidential information on your child is no longer needed. At your request, this information must be destroyed (or changed so that it cannot be identified as belonging to your child). However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.
- 300.561(a) States are required to have continuous procedures to identify handicapped children and to publish a statewide notice in newspapers or other media which informs parents of the requirements regarding identification of handicapped children.
- It must include:
- 300.561(a)(1) ... information as to the languages in which the notice is available.
- 300.561(a)(2) ... a description of the children on whom confidential information is kept and the uses of that information, types of information sought, the methods the state intends to use in gathering the information.
- 300.561(a)(3) ... a description of how this information is kept and protected, and retained and destroyed.
- 300.561(a)(4) ... a description of the rights of parents and children regarding this information.

#### LEAST RESTRICTIVE ENVIRONMENT

Your child has a right to:

- 300.550(b)(1) ... be educated to the extent appropriate with children who are not handicapped.
- 300.550(b)(2) ... be in a regular classroom unless the nature or severity of the handicap is such that he or she cannot receive a satisfactory education in the regular classroom, using additional aids and services.
- 300.551(b)(1) ... have a range of placements available, including regular school classes, special classes, special schools or institutions, residential placements, and home or hospital instructions.
- 300.553 ... participate with non-handicapped children in extra-curricular and non-academic activities, to the maximum extent appropriate.
- 300.552(c) ... attend the school he or she would attend if not handicapped, unless the IEP calls for a different placement.
- Your child's educational placement must be:
- 300.552(a)(1) ... reviewed and decided upon at least annually.
- 300.552(a)(2) ... based on the IEP.
- 300.552(a)(3) ... as close to home as possible.
- 300.551(a) Every school must have available a variety of settings to meet the educational needs of handicapped children. This range must include any placement which is needed to implement the child's IEP. Provision must also be made for supplying any supplementary services needed when a handicapped child is in a regular class.
- 300.552(b)
- 300.551(b)(2)

- 300 552(d) In selecting the least restrictive environment for your child, school officials must consider any possible harmful effects that a particular placement may have on your child or on services your child is to receive.
- It is the responsibility of the State Department of Education to:
- 300 554 ... make arrangements with public and private institutions to insure that to the extent appropriate, handicapped children are educated with non-handicapped children,
- 300 555 ... insure that teachers and administrators are fully informed about the responsibilities for ensuring implementation of the concept of the least restrictive environment and receive training and assistance in its application,
- 300 556 ... insure that all schools in the state are carrying out these requirements. If there is evidence that a school is not, the State Department of Education is obligated to review the school's performance and to see that any shortcomings are corrected.

#### HEARINGS:

- 300 506(a) If at any time you cannot come to agreement with the school regarding your child's education, you have the right to ask for an impartial hearing. A hearing may be held on any matter relating to the identification, evaluation, or placement of your child or the provision of a "free appropriate public education."
- 300 506(b) Hearings are to be held by either the State Department of Education or the school directly responsible for your child's education. To obtain a hearing, you should make a written request to the person who is responsible for the education program your child attends.

#### HEARING OFFICERS:

An impartial hearing officer will be assigned to preside over any such hearing and arrive at a decision. To insure impartiality, a hearing officer may not be:

- 300.507(a)(1) ... an employee of a public agency (school system, institution, etc.) which is involved in the education or care of your child,
- 300.507(a)(2) ... anyone who has a personal or professional interest which would conflict with objectivity in the hearing.
- 300.507(b) A person who otherwise qualifies to conduct a hearing is not an employee of the school solely because he or she is paid by the district to serve as a hearing officer.
- 300 507(c) Each school must keep a list of persons who serve as hearing officers and their qualifications.

#### HEARING RIGHTS:

Rights which both you and the school are entitled included the right to:

- 300 508(a)(1) ... be accompanied and advised by legal counsel and by persons with special knowledge of or training in the problems of handicapped children,
- 300 508(a)(2) ... present evidence and confront and cross examine and compel the attendance of witnesses,
- 300 508(a)(3) ... prohibit the introduction of evidence that had not been revealed to you at least five (5) days before the hearing,
- 300 508(a)(4) ... receive a written or recorded verbatim record of the hearing,
- 300 508(a)(5) ... receive a written finding of fact and the decision of the hearing.
- You also have the right to:
- 300 506(c)(1)(2) ... be told by the school where free or low cost legal help is available. The school must give you this information at any time you request it or whenever a hearing is to take place,
- 300 508(b)(1) ... have your child attend the hearing if you wish,
- 300 508(b)(2) ... open the hearing to the public if you wish,

- 300.511 ... any party aggrieved by the findings and decision made in a hearing who does not have the right to appeal and any party aggrieved by the decision of a reviewing officer has the right to bring a civil action.
- 300.512(d) ... have the hearing conducted at a time and place reasonably convenient to you.
- 300.512(a)(1)(2) Within 45 days of receipt of your request for a hearing, the hearing officer must reach a decision and mail you a copy of the decision.
- 300.512(b)(1)(2) The State Department of Education shall ensure that not later than 30 days after the receipt of a request for a review, a final decision is reached in the review and a copy of the decision is mailed to each of the parties.
- 300.512(c)  
300.509 The hearing officer may grant an extension to this time period at the request of either party. The decision of the hearing officer is final unless either you or the school chooses to appeal.

"APPEALS"

- 300.510(a)(b) If your hearing was held by your school rather than the State, and if you are dissatisfied with the decision of the hearing officer and would like to appeal it, you must inform the State Department of Education of your desire to do so. The State Department of Education will then conduct an impartial review of the hearing. The officer conducting the review will:
- 300.510(b)(1) ... examine the entire hearing record.
- 300.510(b)(2) ... insure that the hearing was conducted properly,
- 300.510(b)(3) ... seek more evidence if necessary, if a hearing is held to receive this additional evidence, then the hearing rights previously described would apply.
- 300.510(b)(4) ... give both parties an opportunity to present oral or written arguments.
- 300.510(b)(5)(6) ... make an independent decision and give both parties a copy of the written findings and the decision.
- 300.510(c) The decision of the impartial review must be reached and a copy of it mailed to you and the school within 30 days of the request for the review (unless an extension is granted by the reviewing official). The decision is final unless either party chooses to bring civil action and pursue the matter in court.
- 300.513(a) During the time that the hearing and appeals process is taking place, your child is to remain in his or her present placement, unless you and the school agree otherwise.
- 300.513(b) If the dispute concerns the initial admission of your child to public school, then he or she, with your consent, will be placed in a public school program until the completion of the proceedings.

"SUBROGATE PARENTS"

Each school must guarantee that rights of children are protected when:

- 300.514(a)(1) ... no parent can be identified,
- 300.514(a)(2) ... the whereabouts of the parents is not known,
- 300.514(a)(3) ... the child is a ward of the State.
- 300.514(b)(1)(2) It is the school's duty to appoint a stand-in or surrogate, or to see that one is appointed. Either the state or your school must have a method of determining and appointing surrogates. The school or state may select a surrogate in any manner permitted by State law, but must make sure that the person selected:
- 300.514(c)(2)(i) ... does not have a conflict of interest,
- 300.514(c)(2)(ii) ... is qualified to represent the child.
- 300.514(d)(1)(2) ... is not an employee of a public agency involved in the education or care of the child (a person is not considered an employee solely because he or she serves as a surrogate).
- 300.514(e) The surrogate may represent the child in all matters relating to identification, evaluation, placement, and the provision of a free appropriate public education.

P.L. 99-172 HANDICAPPED CHILDREN'S PROTECTION ACT OF 1986

Under the Handicapped Children's Protection Act, P.L. 99-372, parents who prevail in a due process hearing or a court action have the right to recover attorney's fees and costs.

COMPLAINT PROCEDURES OF THE STATE

Each public agency shall provide to parents a copy of the "Complaint Procedures of the State" in compliance with EDGAR requirements, 34 CFR Sections 76.780 through 76.782.