



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

MAR 14 1994

Ms. Michele Williams  
Advocates for Children's Education  
8004 S.W. 198 Terrace  
Miami, Florida 33189

Dear Ms. Williams:

Thank you for the opportunity to respond to your concerns regarding children with attention deficit disorder and children with attention deficit hyperactive disorder (referred to in this letter as children with ADD). These concerns were set forth in your letter dated June 14, 1993, to Robert R. Davila, former Assistant Secretary, Office of Special Education and Rehabilitative Services; your letter dated June 14, 1993, to John T. MacDonald, former Assistant Secretary, Office of Elementary and Secondary Education; your letter dated May 6, 1993, to Judy A. Schrag, former Director, Office of Special Education Programs; and your letter dated June 14, 1993, to Jean Peelen, Director, Elementary and Secondary Education Policy Division, Office for Civil Rights. In your letters, you seek further clarification of Department of Education (Department) policies with respect to children with ADD.

Based on your inquiry, it is apparent that you are familiar with the Department Memorandum dated September 16, 1991, entitled "Clarification of Policy to Address the Needs of Children with Attention Deficit Disorders within General and/or Special Education" (Clarification Memorandum). Your questions concern the requirements of two Federal laws: Part B of the Individuals with Disabilities Education Act (Part B) and Section 504 of the Rehabilitation Act of 1973 (Section 504). The Office of Special Education and Rehabilitative Services (OSERS), of which the Office of Special Education Programs (OSEP) is a component, is responsible for administering Part B and for interpreting the requirements of Part B and its implementing regulations at 34 CFR Part 300. The Office for Civil Rights (OCR) is responsible for enforcing Section 504 and for interpreting the Section 504 implementing regulation at 34 CFR Part 104. Copies of the Department's regulations implementing Part B and Section 504 are enclosed for your information. Your questions and the Department's responses are set forth below.

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*Our mission is to ensure equal access to education and to promote educational excellence throughout the Nation.*

1. When (i) ADD is identified through P.L. 94-142, Part B evaluation criteria; (ii) is a chronic or acute health problem limiting alertness (attention); and (iii) adversely affects educational performance, is ADD recognized under Part B?

One of the areas that the Department addressed in the Clarification Memorandum was the eligibility of children with ADD under the "other health impairment" (OHI) disability category. As the Department has previously advised, a child with ADD could be eligible as a child with a disability under the OHI disability category solely by reason of ADD if the ADD is a chronic or acute health problem; the child experiences limited alertness by reason of the ADD; the ADD adversely affects the child's educational performance and, as a result, the child needs special education and related services.

2. When conditions (i), (ii), and (iii) are met as above, is a student only covered by Part B or covered by both Part B and Section 504?

Section 504 employs a functional definition of disability. As set forth at 34 CFR §104.3(j), to be covered by Section 504 in these circumstances, a child must have a physical or mental impairment that substantially limits one or more major life activities. Whether a child's ADD is an impairment that constitutes a substantial limitation must be determined on an individual basis. While it is possible that a child with ADD might be covered by Section 504, but might not be eligible for services under Part B, the reverse -- that the child is eligible for services under Part B, but is not covered by Section 504 -- is difficult to imagine.

3. Is ADD a distinct disability from SLD, dyslexia, etc., deserving of remedies and interventions specifically tailored to alleviate its interferences with the learning process?

A determination of whether a child with ADD is eligible for services under Part B must be made through the evaluation procedures at 34 CFR §§300.530-300.534. A child with ADD may be served under one of several disability categories such as SLD or serious emotional disturbance (SED) or OHI, if the child meets the eligibility criteria for the specific disability category. See 34 CFR §300.7. Please note that dyslexia itself does not constitute a discrete disability category under Part B, but rather is a subcategory of the disability category "specific learning disability," defined at 34 CFR §300.7(b)(10).

Because of its functional focus, Section 504 does not contemplate distinct disabilities. Under Section 504, a school district is required to provide FAPE to each qualified individual with a disability, regardless of the nature or severity of the disability. 34 CFR §104.33(a).

4. Is it mandatory that schools conduct a medical assessment and evaluation (or re-evaluation) when ADD is suspected?

Our response assumes that this question is addressing medical assessment and medical evaluation, rather than medical assessment and general evaluation.

Part B does not necessarily require a school district to conduct a medical evaluation for the purpose of determining whether a child has ADD. If a public agency believes that a medical evaluation by a licensed physician is needed as part of the evaluation to determine whether a child suspected of having ADD meets the eligibility criteria of the OHI category, or any other disability category under Part B, the school district must ensure that this evaluation is conducted at no cost to the parents.

If the school district believes that there are other effective methods for determining whether a child suspected of having ADD meets the eligibility requirements of the OHI category, or any other disability category under Part B, then it would be permissible to use qualified personnel other than a licensed physician to conduct the evaluation as long as all of the protections in evaluation procedures, set forth in the requirements at 34 CFR §§300.530-300.534, are met. However, it would not be inconsistent with Part B for a State to impose a requirement that a school district ensure that a medical evaluation by a licensed physician is conducted as a part of an evaluation. This medical evaluation, however, would have to be at no cost to the child or his/her parents.

Like Part B, Section 504 does not necessarily require a school district to conduct a medical assessment. If a school district determines, based on the facts and circumstances in an individual case, that a medical assessment is necessary to make an appropriate evaluation consistent with 34 CFR §104.35(a) and (b), then the district must ensure that the child receives this assessment at no cost to the parents. If alternative assessment methods meet the evaluation criteria, then these methods may be used in lieu of a medical assessment.

5. Do children with ADD require separate "ADD classes" or are they to be served along a range of placements from mainstream to self-contained, depending upon the students' individual needs?

Part B contains least restrictive environment (LRE) requirements that are equally applicable to children with ADD who have been determined eligible for services under Part B. Under these LRE requirements, each public agency must ensure that all children with disabilities are educated with nondisabled children to the maximum extent appropriate, and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 CFR §300.550(b)(1)-(2). This provision states Part B's strong preference for educating children with disabilities in regular classes with appropriate support services. Further, this LRE requirement prohibits a school district from placing a child with a disability outside of a regular classroom if educating the child in the regular classroom, with supplementary aids and support services, can be achieved satisfactorily. The child's individualized education program (IEP), which sets forth the individualized and appropriate program of special education and related services provided to the child, constitutes the basis for the child's placement decision. Further, Part B requires that each child with a disability be educated in the school or facility as close as possible to the child's home, that is, the school that he or she would attend if not disabled, unless the child's IEP requires another arrangement. 34 CFR §300.552.

Recognizing that the regular classroom may not be the appropriate placement for all children, Part B also requires public agencies to ensure the availability of a continuum of alternative placements, or a range of placement options, to meet the needs of children with disabilities for special education and related services. 34 CFR §300.551(a). The options on this continuum include "instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions." 34 CFR §300.551(b)(1). Further, these options must be made available to the extent necessary to implement each child's IEP. 34 CFR §300.552(b).

Section 504's LRE requirement is virtually identical to that of Part B. 34 CFR §104.34(a) and (b). School districts must provide whatever placements are necessary to provide FAPE in the least restrictive environment.

6. May a child be given detentions, suspensions or expulsions for behaviors that are a direct outgrowth or symptom of his handicap?

Generally, student discipline is a State and local matter. However, when children who are eligible for services under Part B are involved, the requirements of Part B as they pertain to discipline of children with disabilities apply. Part B has been

