

*A Technical Assistance Document
Nebraska Department of Education
Special Education Office
1994*

*Guide For Educators and Parents
in
Nebraska Public Schools*



*Section 504 of the Rehabilitation Act of 1973
Attention Deficit Hyperactivity Disorder
Americans With Disabilities Act*



Acknowledgements

The 1994 Special Education Advisory Council has unanimously endorsed this technical assistance document. This technical assistance document became a reality because of the dedicated committee and individual efforts of...

The Nebraska *Special Education Advisory Council* Ad Hoc Committee on Section 504 of the Rehabilitation Act of 1973/Attention Deficit Hyperactivity Disorder/Americans With Disabilities Act

Sharon Bloechle, Learning Disabilities Association, National Board
Dan Brosz, Grand Island Public Schools
Larry Coates, Grand Island Public Schools
Pat Edney, Children and Adults with Attention Deficit Disorders, Omaha
Barb Elliott, Educational Service Unit #9 (Ad Hoc Committee Co-Chair)
Joseph Evans, Meyer Rehabilitation Institute
Dennis Flood, Elkhorn Public Schools
Antoinis Katsiyannis, University of Nebraska at Kearney
Kathy Rayburn, Learning Disabilities Association, Nebraska Chapter
Bill Regnier, Westside Community Schools
Bob Reid, University of Nebraska at Lincoln
Bob Reier, Lincoln Public Schools
Carol Renner, Kearney Public Schools
Linda Schafer, NE Department of Education (Ad Hoc Committee Co-Chair and Document Editor)
Nancy Schneider, Children and Adults with Attention Deficit Disorders, Lincoln
Richard Schoonover, Bellevue Public Schools
Marlene Snyder, Children and Adults with Attention Deficit Disorders, State Chapter; University of NE,
Office of Children, Families and the Law
Gregg Wright, University of NE, Office of Children, Family, and the Law

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Section 504/ADHD/ADA

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Section 504 Terms Used in the Document

SECTION 504

The part of the Rehabilitation Act of 1973 that guarantees specific rights in federally funded programs and activities to people who qualify as disabled. Section 504 states: "No otherwise qualified handicapped individual in the United States... shall, solely by reason of his handicap be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance..."

OFFICE FOR CIVIL RIGHTS (OCR)

Has three primary responsibilities; investigating complaints, conducting compliance reviews, and providing technical assistance. There are ten regional offices located throughout the United States. The regional office responsible for compliance monitoring in Nebraska is located in Kansas City, MO.

PHYSICAL OR MENTAL IMPAIRMENT

(1) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and Emphatic; skin; and endocrine; or (2) any mental or physical disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction, and alcoholism.

PROGRAM ACCESSIBILITY

The school district will ensure programs and activities are accessible to and usable by persons with disabilities. In many instances, programs and activities may be made accessible through slight modifications and adjustments in procedures, practices, and policies. In others, building renovation or construction may be required. But structural change is required only in instances where program accessibility cannot be achieved effectively through other means.

PROGRAM OR ACTIVITY

Within the context of Section 504, this includes all operations of state and local agencies that receive federal funds. This includes colleges, universities, and/or school systems.

PUBLIC NOTICE

All school districts are required to provide public notice and internal notice (i.e., to staff and students) stating they do not discriminate on the basis of a disability.

REASONABLE ACCOMMODATIONS

School districts are required to make adjustments to allow for known physical or mental limitations of a student with disabilities.

SECTION 504 COORDINATOR

School districts employing 15 or more persons must designate an individual to coordinate compliance with Section 504 regulations and to adopt a grievance procedure. It is recommended that all school districts designate a 504 Coordinator.

SELF-EVALUATION

Section 504 requires that federal fund recipients evaluate their programs, physical accessibility, and employment practices to determine the extent to which programs and activities require modification to ensure full participation by students with disabilities. These evaluations should be updated frequently.

TRANSITION

If a recipient determines that structural modifications are necessary to meet Section 504 program accessibility

requirements, the school must develop a plan specifying the steps necessary to complete such changes and the time frame for completion. The document containing these steps and a recipient's schedule for making structural changes is termed "transition plan." This Transition Plan should not be confused with a "transition plan" under IDEA which outlines an individual student's transition goals and objectives on the IEP. The Americans with Disabilities Act (ADA) has similar standards for accessibility.

UNIFORM FEDERAL ACCESSIBILITY STANDARDS (UFAS)

UFAS are the standards the federal government uses to meet Section 504's accessibility requirements for the design, construction and alteration of buildings.

ACCOMMODATIONS

Adjustments or modifications made by classroom teacher(s) and other school staff to enable the students with disabilities to benefit from their educational program. In some cases a plan should be developed outlining services and/or accommodations.

BARRIER-FREE ENVIRONMENT

A school environment that contains no obstacles to accessibility and usability by students with disabilities. Barriers can be physical and non-physical.

CONTAGIOUS DISEASES PROTECTED UNDER 504

Contagious diseases are those that can be transmitted from person to person. Included are such diseases as AIDS and tuberculosis.

PERSONS WITH DISABILITIES

Any student who 1) has a physical or mental impairment which *substantially limits* one or more major life activities, 2) has a record of such an impairment, or 3) is regarded as having such an impairment. The regulations still use the word "handicapped"; for purposes of this document "disabled" will be used.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA)

The Education for All Handicapped Children Act (originally P.L. 94-142) was amended and renamed the Individuals with Disabilities Education Act. These are the federal special education law and regulations.

92 NAC 51

Nebraska regulations for the operation of special education programs. (Rule 51)

MAJOR LIFE ACTIVITY

Functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

Section 504 Overview

Introduction

With passage of the Rehabilitation Act of 1973, Congress required that federal fund recipients make their programs and activities accessible to all individuals with disabilities. "No qualified individual with disabilities, shall, solely by reason of her or his disability be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

Section 504 protects persons from discrimination based upon their disability status. A person is disabled within the definition of Section 504 if he or she:

1. *has a mental or physical impairment which substantially limits one or more of such person's major life activities;*
2. *has a record of such impairments; or*
3. *is regarded as having such an impairment.*

"Major life activities" include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. When a condition does not substantially limit a major life activity, the individual does not qualify under Section 504.

Section 504 has three major areas of emphasis: employment practices, program accessibility, and requirements for preschool, elementary, and secondary education.

SUBPART B: EMPLOYMENT PRACTICES

With respect to employment, a qualified person with disabilities is a person who, with reasonable accommodations, can perform the essential functions of the job in question.

The regulation prohibits discrimination of all employment related decisions in federally assisted programs, including, but not limited to, recruitment hiring, promotion, award of tenure, layoff and rehiring, compensation, job assignments, leave, fringe benefits, training, and employer sponsored activities.

SUBPART C: PROGRAM ACCESSIBILITY

No qualified person with a disability shall be denied the benefits of, be excluded from participation in, or be otherwise subjected to discrimination under any program or activity because facilities are inaccessible or unusable.

SUBPART D: Requirements FOR PRESCHOOL, ELEMENTARY, AND SECONDARY EDUCATION

Elementary and secondary school recipients operating preschool and adult education programs must take into account the needs of qualified persons with disabilities in determining the aid, benefits, or services to be provided under these programs or activities.

There has been much confusion over the years regarding the relationship between Section 504 and special education laws and regulations. It must be emphasized that Section 504 falls under the responsibility of the **general education program**. School personnel and parents need to work in collaboration to help guarantee that the student is provided with the necessary accommodations and/or services.

A student who is found to be disabled under Section 504 is typically served by the staff and resources of the general education program. An exception to this standard would be a student who has been determined eligible as disabled under 92 NAC 51 (special education Rule 51). Such a student could receive special education and accommodations required under Section 504.

Schools must provide a free appropriate education to Section 504 school age students with disabilities in their jurisdiction. Instruction must be individually designed to meet the needs of the student as adequately as the needs of students without disabilities. This standard of what is "appropriate" differs from the Individuals with Disabilities Education Act (IDEA) and 92 NAC 51 "appropriate" standard which requires the district to design a program reasonably calculated to confer educational benefit. Section 504 requires reasonable accommodations designed to meet a child's education needs to the same extent that those of nondisabled children are met.

ELIGIBILITY

If the district has reason to believe that, because of a disability as defined under Section 504, a student needs special accommodations or services in the regular setting in order to participate in the school program, the district must evaluate the student. If it is determined that the student is disabled under Section 504, the district must develop and implement the delivery of all needed services and/or accommodations.

Although Section 504 does not require school districts to develop an IEP with annual goals and objectives, it is recommended the school document that services and/or accommodations for each eligible Section 504 student are being provided. If a student requires extensive accommodations, a team must meet to develop a plan that outlines the student's services and accommodations. Parent participation should always be encouraged.

When students require only very simple physical accommodation, which involves no educational interventions and no significant physical accommodation, these procedures do not provide for verifying the student as disabled (handicapped) under Section 504. Thus, no procedural implementation is required, provided the district is in a position to document other needs have been ruled out.

SERVICES

The determination of what services and/or accommodations are needed must be made by a group of persons knowledgeable about the student. The parents should be included in this process whenever possible. The group must review the nature of the disability and how it affects the student's education. The decisions about Section 504 eligibility and services must be documented in the student's file and reviewed periodically.

The quality of educational services provided to students with disabilities must be equivalent to the services provided to non-disabled students. Teachers, administrators, and staff should receive ongoing training in the instruction of students with disabilities and be knowledgeable about appropriate materials and equipment.

PROCEDURAL REQUIREMENTS

To be in compliance with Section 504, the school district must do the following:

1. Provide Written Assurance Of Nondiscrimination whenever the district receives federal money (e.g., on the LEA application). [34 CFR 104.5(a)]
2. Designate an Employee To Coordinate Compliance with Section 504 (if there are more than 15 employees). [34 CFR 104.7(a)]
3. Provide Grievance Procedures to resolve complaints of discrimination (if more than 15 employees); this does not apply to denial of employment. [34 CFR 104.7(b)]

4. Provide Notice to students and parents regarding the district's responsibilities under Section 504. A separate notice should be available for employees, unions, and professional organizations of nondiscrimination in admission or access to, treatment and employment in, its programs or activities (if more than 15 employees). This notice must be included in student/parent handbook. [34 CFR 104.8]
5. It is recommended that the school district's ongoing CHILDFIND locate and identify students who might qualify under Section 504.
6. Annually notify persons with disabilities and their parents or guardians of the district's responsibilities under Section 504. [34 CFR 104.32(b)]
7. Provide parents or guardians with Procedural Safeguards:
 - a. notice of their rights;
 - b. an opportunity to review relevant records;
 - c. an impartial hearing. It is important that parents or guardians be notified of their right to request a hearing regarding the identification, evaluation, or educational placement of persons with disabilities. [34 CFR 104.36]; and,
 - d. review procedures. Compliance with the procedural safeguards under IDEA is one way of meeting these requirements.

PARENT AND STUDENT RIGHTS

There are several times during the planning process when parents/guardians are informed of their rights under Section 504 of the Civil Rights Rehabilitation Act (Part D) of 1973.

- When eligibility is determined.
- When accommodations and/or services are developed.
- Before there is a significant change in the plan for services.

Notification Includes the Following Rights Under 504:

1. Right to file a grievance with the school district over an alleged violation of Section 504 regulations.
2. Right to have an evaluation that draws on information from a variety of sources.
3. Right to be informed of any proposed actions related to eligibility and plan for services.
4. Right to examine all relevant records.
5. Right to receive all information in the parent's/guardian's native language and primary mode of communication.
6. Right to periodic evaluation and/or re-evaluations before any significant change in program/service modifications.
7. Right to an impartial hearing if there is disagreement with the school district's proposed action.
 - Section 504 regulations do not establish time lines for submission of a hearing request.
 - Section 504 regulations do not define "impartial". However, in similar processes, impartial has been defined as a person not employed by or under contract with the district in any capacity.
 - Due process hearing officer under Part B could be used to hear Section 504 complaints.
 - Section 504 regulations do not require that the selection of the hearing officer be a mutually agreed upon decision between the school district and the parents/guardians.
8. Right to be represented by counsel in the impartial hearing process.
9. Right to appeal the impartial hearing officer's decision.

DISCIPLINE OF STUDENTS WITH DISABILITIES

Section 504 requires that the school district evaluate all students with disabilities before making an initial placement or any subsequent, significant change in his or her placement. The proposed exclusion of a student with disabilities that is permanent (expulsion), for an indefinite period, or for more than 10 consecutive school days, constitutes a "significant change in placement" under Section 504.

A series of suspensions that are each of 10 days or fewer in duration that creates a pattern of exclusions may also constitute a "significant change in placement." The determination of whether a series of suspensions creates a pattern is made on a case-by-case basis. In no case, however, may serial, short exclusions be used to avoid the requirements of reevaluation before suspensions of more than 10 days.

Among the factors considered in determining whether a series of suspensions has resulted in a "significant change in placement" are the length of each suspension, the proximity of the suspensions to one another, and the total amount of time the student is excluded from school. OCR does not consider a series of suspensions that, in the aggregate, are for ten days or fewer to be a significant change in placement.

Before implementing a suspension or expulsion that constitutes a significant change in the student's placement, the school must conduct a reevaluation to determine if the behavior was caused by the disability.

PROGRAM ACCESSIBILITY

In accordance with the Section 504 regulation, no qualified student with disabilities shall be denied the benefits of, be excluded from participation in, or be otherwise subjected to discrimination under any program or activity because a recipient's facilities are inaccessible or unusable. The Section 504 regulation requires all recipients of federal financial assistance to operate their programs or activities so they are readily accessible to students with disabilities.

The regulation contains two standards to be used in determining whether a recipient's programs and activities are accessible to students with disabilities. One standard deals with "existing" facilities; the other deals with "new" construction. The term "existing facility" means the facility was in existence or in the process of construction before June 3, 1977, the effective date of the regulation. The term "new construction" means ground breaking took place on or after the effective date of the regulation.

The standard for a facility existing before June 3, 1977 requires that federally assisted programs or activities operated in that facility must, when viewed in their entirety, be readily accessible. This standard does not require that every facility or part be accessible, so long as the program as a whole is accessible.

Thus, recipients need not make structural changes to facilities which existed before June 3, 1977, where other alternative methods are effective in making programs and activities accessible, so long as priority consideration is given to offering the services in the most integrated setting appropriate.

One example of an alternative method in a school would be the relocation of classes, activities or services to an accessible site. Facility alteration or new construction is required to achieve program accessibility only if sufficient relocation of classes, activities or services cannot be housed in an existing facility.

In meeting the objective of program accessibility, a recipient must take precautions not to isolate or concentrate students with disabilities in settings away from non-disabled students. On the other hand, the regulation requires that all new construction begun after June 3, 1977, as well as alterations to existing facilities, must be designed and constructed so as to make facilities accessible and usable by students with disabilities.

In summary, it is important to keep in mind that some students who have physical or mental conditions that limit their ability to access and participate in the education program are entitled to rights under Section 504 even though they may not fall into IDEA categories and may not be eligible to receive special education programs and related services under 92 NAC 51 (Rule 51).

Employment Practices

No qualified person should on the basis of their disability, be subjected to discrimination in employment under any program or activity that receives federal funds.

School districts must make reasonable accommodations for qualified applicants or employees with known physical and mental limitations unless the accommodation would impose an undue hardship on the school district's operations.

Examples of reasonable accommodations would be such as making facilities accessible to and usable by persons with disabilities, job restructuring, part time or modified work schedules, and acquisition or modification of equipment or devices. The regulations mention the following factors to consider as "undue hardship."

1. The overall size of the district's program with respect to the number of employees, number and type of facilities, and size of budget
2. The type of the district's operation, including the composition and structure of its work force
3. The nature and cost of the accommodation needed.

Coordination

The general provisions of Section 504 require the designation of a person(s) to coordinate the school district's efforts to comply with its various components. Under Subpart D, coordination activities will include some or all of the following:

- Establishment and monitoring of a Section 504 referral/identification/review process;
- Establishment and monitoring of an impartial hearing process;
- Provision of staff awareness/training activities concerning Section 504 requirements; and
- Maintenance of data on Section 504 referrals.

While Section 504 regulations do not mandate the latter two activities, it is recommended that training be provided and a data collection system be established.

The Section 504 Coordinator could be someone already employed by the school district. Preferably it should be an administrator who is knowledgeable about federal laws and regulations.

The Section 504 Coordinator should monitor that:

1. Referrals are received from parents, individual teachers, adult age students and/or community agencies.
2. The presenting problem(s) and previous remedies should be considered and reviewed. The summary should include all current information recommendations for additional evaluation.
3. The school district periodically notifies the parent(s), in writing, of the school's reasons and intent to conduct an evaluation. The notice could include due process rights and a description of the evaluation.
4. Section 504 requires that a school district evaluate all students with disabilities before making an initial placement or any subsequent, significant change in his or her placement.
5. The school receives parental consent and initiates any required evaluations.
6. The classroom teacher(s) and/or school staff make the necessary accommodations to allow for the student's disability. Parents should be consulted and give input regarding the accommodations. In many cases this process will not need a formal team meeting.
7. In cases where major services and/or accommodations are necessary, the Coordinator plans a 504 Student Assistance Team (SAT) Meeting and identifies all staff and parent(s) who should be included in the meeting.
8. The following factors should be considered: (a) evaluation results; (b) Section 504 eligibility; (c) the student's unmet needs; (d) services and/or accommodations based on eligibility; (e) discuss and plan possible staff inservice.
9. The accommodations and/or services are implemented.
10. Each student's accommodations and/or services will be reviewed at least annually.

Potential Eligibility Under Section 504

ATTENTION DEFICIT DISORDER (ADHD)

The student may not meet eligibility requirements under IDEA as emotionally disturbed (Behavioral Disorder), learning disability or other health impairment. The student is regarded as having a disability (ADHD) under Section 504. The disability limits the major life activity of learning.

ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS)

The student frequently misses school and does not have the strength to attend a full day. This student has a record of a disability which substantially limits the life activities of learning and working.

ARTHRITIS

A student with arthritis may have persistent pain, tenderness or swelling in one or more joints. A student experiencing arthritic pain may require a modified physical education program.

ASTHMA

A student has been diagnosed as having asthma. The doctor has advised the student not to participate in physical activity outdoors. The disability limits the major life function of breathing. The school is required to make reasonable accommodations in the physical education program.

CANCER

A student with a long term medical problem may be given considerations to accommodate special needs. For example, a student with cancer may need a class schedule that allows for rest and recuperation following chemotherapy.

EMOTIONALLY DISTURBED

A student who is emotionally disturbed may need an adjusted class schedule to allow time for regular counseling or therapy.

HOSPITAL/HOMEBOUND

A student was in an automobile accident and will require hospital/homebound services for three months. The student is disabled under Section 504 and should receive special accommodations.

PARENT WITH HEARING IMPAIRMENT

A parent is hearing impaired and requests access to school sponsored activities. The school district makes accommodations by providing interpreter services for the parent to participate effectively in school sponsored events or meetings about the student.

OBESITY

A student has an extreme eating disorder that may require special accommodations. Obesity may be considered a disability under Section 504 where it substantially impairs a major life activity or is perceived by others as doing so.

STUDENT WITH SPECIAL HEALTH CARE NEEDS

The student has a special health care concern; and requires clean intermittent catheterization twice each day. This procedure empties the bladder and helps prevent urinary tract infections and possible wetting. The school is required to provide trained personnel to perform the procedure, or to provide the student a private location to perform the procedure.

SCHOOL EMPLOYEES WITH DISABILITIES

The employer shall make "reasonable accommodations" for applicants and employees with disabilities who have physical or mental limitations, unless it can be demonstrated that the accommodations would impose an undue hardship on the program.

Examples of School District Section 504 Discrimination

A school district discriminates when the district:

- Denies a person with disabilities the opportunity to participate in or benefit from an aid or service which is afforded students without a disability (e.g., district practice of refusing to allow any student with a disability the opportunity to be on the honor roll; denial of credit to a student whose absenteeism is related to his/her disability; expelling a student for behavior related to his/her disability; refusing to dispense medication to a student who could not attend school otherwise).
- Fails to afford the student with disabilities an opportunity to participate in, or benefit from, the aid or service that is equal to that afforded others.
- Fails to provide aids or services to the person with disabilities that are as effective as those provided to non-disabled persons (e.g., placing a student with a hearing impairment in the front row as opposed to providing her with an interpreter). Note: "Equally effective" means equivalent as opposed to identical. More over, to be equally effective, an aid or service need not produce equal results; it must merely afford an equal opportunity to achieve equal results. (Comment to 34 CFR 104.4(b)(2))
- Provides different or separate aids or services unless such action is necessary to be as effective as the aids, benefits or services provided to other students (e.g., segregating students in separate classes, schools or facilities, unless necessary).
- Perpetuates discrimination by providing significant assistance to an agency, organization or person that discriminates on the basis of a disability.
- Denies a person with disabilities the opportunity to participate as a member of a planning or advisory board strictly because of his/her disability.
- Otherwise limits the enjoyment of any right, privilege, advantage or opportunity enjoyed by others (e.g., prohibiting a person with a physical disability from using a service dog at school).
- In determining the site or location of a facility, makes selections which effectively exclude persons with disabilities, denies them the benefits of, or otherwise subjects them to discrimination.

Section 504 Issues

Q What role does the parent play in the 504 process?

A The parent is the expert regarding their child, they must always give permission for initial evaluations and placements. Schools and parents should work together in partnership, sharing expertise and responsibility.

Q What is a district's responsibility to make buildings accessible?

A Facilities which were constructed prior to June 3,1977 need not be made accessible so long as the program or activity, viewed in its entirety, is readily accessible to persons with disabilities. (34 CFR 104.22) It would not be necessary to make every school in a district accessible. However, the student must be afforded an equal opportunity to enjoy the full range of services offered by the district. For example, if the district runs a magnet school with specialized studies, students may not be denied access to the program merely because of accessibility problems.

Q Short of major modifications, what can a district do?

A The district can redesign equipment, reassign classes or other services to accessible buildings, assign a paraprofessional to the student, deliver services at alternate accessible sites, or alter existing facilities. If there are methods which are as effective in achieving compliance, the district need not undertake structural changes to a building. (34 CFR 1(M.22(b))

Q What are some examples of what is not an acceptable accommodations?

A Carrying a student upstairs, making one particular building or part of a building accessible and placing all students with mobility impairments at this location (Comment to 34 CFR 104.22), having students with disabilities eat on a separate floor due to an inaccessible cafeteria.

Q What is the school district's obligation for new buildings or additions?

A Buildings or additions constructed since June 3,1977 must be designed and constructed to allow persons with disabilities easy access. (34 CFR §104.23(a)) For example, multilevel buildings should have ramps or elevators, accessible bathrooms, doorways constructed wide enough to fit wheelchairs, etc. Contractors should be familiar with accessibility requirements.

Q What is a district's obligation when a building is altered?

A Facilities which are altered after June 3,1977 must be altered to allow accessibility and usability by persons with disabilities. (34 CFR 104.23(b)) For example, if the school district adds on a wing to a building, the wing must be made accessible. If a storage room is modified into a classroom, modifications, such as widening the doorway, must be made.

Q What is meant by the phrase "to the maximum extent feasible?"

A This provision covers the occasional instance where the nature of an existing facility makes it impractical or extremely expensive to renovate so that it is entirely barrier-free. However, in all of these instances, the alteration should provide a maximum amount of physical accessibility. Comment to (34 CFR 104.23(b))

Q What is meant by accommodations?

A Adjustments or modifications that enable the student to benefit from their educational program. In many cases these modifications are all that is necessary for the student to achieve and maintain classroom goals and objectives.

Q What is an (Individual) Accommodation Plan?

A A written document that outlines the student's educational program. It should contain educational goals and objectives. The plan may be developed by the SAT or multidisciplinary Team and should be reviewed at least annually. It is similar to an Individualized Education Program (IEP) in special education. It is important to note that Section 504 does not require a written accommodation plan.

Q Would the procedural requirements under the Individuals with Disabilities Education Act (IDEA) satisfy Section 504 requirements?

A Yes, if the school district uses the same procedures outlined in IDEA for Section 504 students, we would be meeting legal requirements. However, it is important that the programs are not combined. Section 504 is a general education responsibility.

Q Does the school district receive federal funds to help implement Section 504 services ?

A No, state and local fiscal resources must be used.

Q Who is the school district Section 504 Coordinator?

A The individual should be knowledgeable about Section 504. This is not necessarily a new position, the school could utilize existing staff resources.

Q Who should a district call regarding technical assistance on accessibility issues?

A The U.S. Department of Education's Office for Civil Rights can provide technical assistance on how to fulfill the requirements of Section 504.

United States Department of Education
Office for Civil Rights, Region VII
10220 North Executive Hills Blvd. 8th Floor
Kansas City, MO 64153-1367
(816) 891-8103

Recommended Section 504 Assessment Procedures

The following information is intended to be used with the Recommended Assessment Process flow chart in developing and tailoring individual district procedures for Section 504 of the Rehabilitation Act. [34 CFR 104.35(b)] It should be noted that a specific but parallel procedure has been recommended elsewhere in this document to determine Section 504 eligibility for student suspected of having an attention deficit or an attention deficit hyperactivity disorder.

Student Need

The student's teacher(s) or parent/guardian identify difficulties. Parent/guardian involvement is encouraged at all levels of this process.

Questions to consider when developing district procedures:

- How will the district conduct Section 504 annual child find requirements? [34 CFR 104.32(a)]
- Who is responsible for child find?

Referral to SAT

Students who demonstrate difficulties are typically referred to the building Student Assistance Team (SAT). A sample form has been included on page 42. The responsibilities of the SAT have been broadened in this recommended procedure. The SAT, because of the general education input, becomes the group that will make Section 504 eligibility decisions and will then prepare the accommodation plan assuring a free appropriate education under Section 504.

Questions to consider when developing district procedures:

- Who will receive the referral?
- Who is responsible for assigning the referral to a building SAT?
- How are SAT members determined?

Level I SAT Process

The Level I SAT process is intended for discussion, problem solving, review of available data, and/or development of intervention strategies to rectify concerns.

Questions to consider when developing district procedures:

- What kinds of information will be collected and by whom?
- Who will be responsible for the process?
- How will the SAT proceedings and decisions be documented?

SAT analyses classroom interventions and make decisions regarding next steps

If intervention strategies are successful, there is no need for the SAT to proceed. If intervention is not

successful and/or more serious difficulties are suspected, the SAT will need to consider alternatives. At this point the SAT may decide to proceed to the Level II SAT process to gather further information including traditional Rule 51 evaluation personnel. Another option would be for the SAT to formally begin a Section 504 evaluation, or to refer the student for a 92 NAC 51, Rule 51 multidisciplinary evaluation team assessment. Decisions and rationale must be documented.

It is recommended that each building level SAT ensure that the parent(s)/guardian(s) are provided with notice and appropriate information about Section 504 screening and assessment procedures. A sample is located on page . Individual 504 assessment will require parent/guardian permission.

Level II SAT Process

The Level II SAT Process allows for the SAT to gather additional information prior to making a referral decision or a determination for Section 504 eligibility.

When the analysis of the SAT data indicates that a referral to the MDT for special education evaluation is not needed, but additional individual assessment is needed to consider Section 504 eligibility, this information will be communicated in writing to the parent/guardian and the appropriate administrator. The information should include the rationale for further assessment and the assessments being requested.

Parents/guardians will be notified in writing in a reasonable time of the district's intent including rationale for not conducting a 92 NAC 51 special education evaluation and the district's intent to conduct or not conduct a Section 504 evaluation. If all parties agree to proceed with a 504 evaluation, permission to conduct the evaluation will be documented. The consent for evaluation and due process rights from 92 NAC 51 plus the right to access a local review or grievance procedure will be provided to the parent/guardian.

Level III - Additional Evaluation Needed

Questions to consider when developing district procedures:

- How will assessment decisions be made?
- Will all 504 evaluations be processed first through the Rule 51 MDT process? or
- Will the SAT make some or all of the 504 eligibility decisions?
- Who will be responsible for providing 504 notice information to the parent/guardian?
- Who will be responsible for obtaining parent permission?
- How will the district determine if parent/guardian notice and permission are needed?

Questions to consider when developing district procedures:

- Who will gather the additional information?
- (The same notice and permission questions)
- Who will be responsible for parent/guardian permission, written notification, and due process rights?

ion will be made by the SAT whether to proceed with a Section 504 evaluation decision, the need for additional information, or a referral for a Rule 51 MDT Evaluation.

Procedures discussed in the "Level II SAT Process" information also apply here.

Determination of 504 Eligibility

Section 504 requires school districts to evaluate students to determine the following according to the definitions found in 34 CFR 104.3(j) and 104.35:

1. Is there evidence of a disability which substantially limits one or more major life activities (caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working)?
2. Is there a record of such an impairment? or
3. Is the student regarded as having such an impairment?

Section 504 eligibility can be determined by the SAT, the Rule 51 MDT, or other appropriate persons.

504 Protected

If a student is found to be disabled under Section 504, an accommodation plan will be developed by the SAT, the MDT, or another group of knowledgeable persons.

Not Eligible

If a student is found not eligible under Section 504, it is recommended that the student be monitored periodically by the SAT, but not have an accommodation plan.

Questions to consider when developing district procedures:

- How will the SAT make this decision(s)?
- How will the decision(s) be documented?
- Who will be responsible for notifying the parent/guardian of the decision?

Questions to consider when developing district procedures:

- Who will determine eligibility? SAT? MDT? Other group of knowledgeable persons? [34 CFR 104.34(c)(3)]
- How will "substantially limits" be determined?
- How will the determination and the basis for the determination be documented?
- How will the district document that the information gathered was carefully considered? [34 CFR 104.35(c)(2)]

Questions to consider when developing district procedures:

- Who will be responsible for the development of the accommodation plan? [34 CFR 104.33(a)]

Questions to consider when developing district procedures:

- What will happen to students who are found to be not eligible for protection under Section 504?
- Who is responsible for providing notice of

Accommodation Plan

If a student is found to be disabled under Section 504, it is recommended that an accommodation plan be developed by the SAT, the MDT, or another group of knowledgeable persons. It is recommended that the team include at least the student's classroom teacher(s), the building 504 coordinator, the parent/guardian, and person(s) knowledgeable of the assessment procedures used.

It is recommended that the following persons serve on the Accommodation Plan Team:

- a. Person(s) knowledgeable in the evaluation process/data collection analysis, and reporting;
- b. Person(s) currently teaching or providing instructional services to the student;
- c. Person(s) who may provide the accommodation, special services or related services (knowledgeable of placement options/modifications);
- d. Parent/guardian
- e. Student, if appropriate
- f. Other parties who are thought to be able to make meaningful contributions to the student's educational needs.

It is recommended that the following components be included in an Accommodation Plan:

- a. A description of instructional and related services and supplementary aids;
- b. The beginning and ending dates of those services, aids and accommodations/modifications;
- c. Assurance that all accommodations and services/modifications will be provided in the least restrictive environment to the maximum extent possible;
- d. The date for student reevaluation;
- e. The date when the IAP will be reviewed for continued implementation, termination or reevaluation;

this decision to the parent/guardian?

- How will students found not eligible under Section 504 be monitored?
- Who is responsible for monitoring these students?

Questions to consider when developing district procedures:

- Who is responsible for the development of the Accommodation Plan? [34 CFR 104.35(c)(3)]
- How often will Accommodation Plans be reviewed?
- Who is responsible for initiating the accommodation plan review?
- When will 504 eligible students be reevaluated? [34 CFR 104.35(d)]

- f. Signature of the Accommodation Plan chairperson, other team members, parent/guardian, student.

Rule 51 MDT Evaluation

A district may use the already established Rule 51 MDT evaluation process for determination of Section 504 eligibility. If the district chooses this process, the district Section 504 procedures need to reflect the process.

Special Education Verification

(This portion of the flow chart was used to complete the comparable 92 NAC 51, special education process.)

Individual Education Plan (IEP)

(This portion of the flow chart was used to complete the comparable 92 NAC 51, special education process.)

Recommended Section 504 Hearing Procedures

If parents disagree with the district's identification, evaluation, provision of services or change or termination of services under Section 504, they have a right to request a 504 hearing. The following hearing procedure is recommended.

The district 504 forms indicate a district person to contact if a parent requests a hearing under the provisions of Section 504. This person will attempt to resolve the parent complaint or grievance in an informal manner. If resolution is not reached, the district contact person will advise the parent(s) of the following procedures.

Procedure:

1. The parent request for a Section 504 hearing shall be in writing. The request shall specify the reason(s) the hearing is being requested.

2. Within 5 calendar days of the receipt by the district of the request for the hearing, the district shall provide the parents with a list of impartial 504 hearing officers.

3. The parents, within 5 days of receipt of the list of impartial 504 hearing officers, will indicate their first, second, and third choice of hearing officers from the list provided.

4. The district will, upon receipt of the parents' selection, promptly notify the first choice hearing officer of the pending case. In the event that the first choice hearing officer cannot hear the case, the second choice officer will be contacted. In the event that the second choice officer cannot hear the case, the district will contact the parents' third choice officer. If none of the officers contacted can hear the case, the parents will be asked to select and prioritize three additional hearing officers.

Procedure:

5. The hearing will be scheduled by the hearing officer within a reasonable time.

Questions to consider when developing district procedures:

- Will the district develop a form?
- Who should receive the written request?

- Who will develop the list of potential impartial hearing officers?
- What qualifications should the hearing officer have?
- How will the district document the 5 calendar days?

(Section 504 regulations do not require that the selection of a hearing officer be mutually agreed upon between the district and the parent.)

- Who will contact the hearing officer?

Questions to consider when developing district procedures:

6. The district and the parents have the right to present evidence relevant to the issue raised by the parents. The parties shall have the right to be represented at the hearing by legal counsel.
7. The hearing officer shall limit his/her decision to the issue or issues presented by the parents in their written request for a hearing. The hearing officer's decision must be written and shall include a summary of the evidence and the reasons for the decision. The decision is to be based solely on the hearing officer's interpretation of the meaning or application of Section 504 of the Rehabilitation Act of 1973.
8. The hearing officer's decision will be made within a reasonable period of time following the conclusion of the hearing. The hearing officer shall send a copy of the decision to the parents and school district.
9. The decision of the hearing officer shall be considered final.
10. The hearing will be provided at no cost to the parents.

- How many days will be a "reasonable time?"
- How will the time span be documented?

- Who will be responsible for gathering evidence relevant to the issues raised by the parent?
- Will the district be represented by legal counsel? Who will make this decision?

- What will be considered a "reasonable period of time" following the conclusion of the hearing?
- To whom in the district should the hearing officer send a copy of the decision?

- Who will be responsible for carrying out the hearing officer's decision?

- Who will be responsible for assuring that the hearing will be provided at no cost to the parents. (The district is not required to provide legal counsel for the parent.)

SECTION 504 POLICY/PROCEDURES CHECKLIST

Does the school district provide, via policy or procedures:

1. _____ An up-to-date self-evaluation, including an opportunity for persons with disabilities, their advocacy organizations, and other interested individuals, to submit comments? [See 28 CFR Sec.35.1051]
2. _____ The following: [See 34 CFR Sec. 104.8 and 104.32(b); 28 CFR Sec. 35.106]
 - a. continuing Public notice that your district does not discriminate on the basis of disability with regard to admission or access to and treatment or employment in your programs and activities?
 - b. continuing internal notice (i.e., to staff and students) to the same effect?
3. _____ Identification in those notices of a Sec. 504 coordinator and an ADA coordinator? [See 34 CFR Sec. 104.7(a) and 104.8; 28 CFR Sec. 35.107(a)]
4. _____ A grievance Procedure for disability-discrimination complaints that: See 34 CFR Sec. 104.7(b); 28 CFR Sec. 35.107(b)
 - a. incorporates appropriate due process standards?
 - b. provides for the prompt and equitable resolution of those complaints?
5. _____ Reasonable accommodations for qualified applicants and employees with disabilities, such as each of the following unless it demonstrably would impose an "undue hardship" on the operation of the program:
 - a. making facilities used by employees readily accessible to and usable by handicapped persons?
 - b. modifications or adjustments to the job application process that enable a qualified applicant with a disability to be considered?
 - c. modifications or adjustments in the work environment that enable a qualified individual with a disability to perform the essential functions of that position?
 - d. appropriate adjustment or modification of examinations, training materials, or policies?
 - e. job restructuring and part-time or modified work schedules?
 - f. reassignment to a vacant position?
 - g. acquisition or modification of equipment or devices?
 - h. the provision of readers or interpreters or other similar actions?
6. _____ Not using employment tests or other selection criteria that tend to screen out persons with disabilities unless these criteria are demonstrably job related and unless effective alternatives are not available? [See 34 CFR Sec. 104.13(a); 29 CFR Sec.1630.10]
7. _____ Not making Preemployment inquiries as to whether the applicant is an individual with a disability? [See 34 CFR Sec. 104.14(a); 29 CFR Sec. 1630.13]
8. _____ Ready accessibility to individuals with disabilities to each of your programs and activities when viewed in its entirety? [See 34 CFR Sec. 104.22; 28 CFR Sec. 35.150]
9. _____ An individualized evaluation (in the native language) for any student who is believed to: [See 34 CFR Sec. 104.35 and 104.3(j)]
 - a. have a physical or mental impairment which substantially limits one or more major life activities,
 - b. have a record of such impairment, or
 - c. be regarded as having such an impairment?
- 10._____ For each student meeting any of the criteria in item #9, an "appropriate education," which is defined as general or special education and related aids and services that are designed to meet his/her individual needs as adequately as the needs of non-disabled persons are met and that are based upon procedures referred to in item #11? [See 34 CFR Sec. 104.33]
- 11._____ Parental notice (in the native language) of the rights to: [See 34 CFR Sec. 104.36]

- a. have an individualized evaluation (item #9)?
 - b. examine relevant records?
 - c. demand an impartial hearing with the opportunity to be represented by counsel?
 - d. obtain a subsequent review?
- 12._____ If separate classrooms for special education, that they be comparable facilities to those for general education?
[See 34 CFR Sec. 104.34(c)]
- 13._____ Nonacademic and extracurricular services and activities so as to provide handicapped persons with an equal opportunity for participation? [See 34 CFR Sec. 104.37]
- 14._____ Integrated settings to the maximum extent appropriate to the needs of qualified individuals with disabilities?
[See 34 CFR Sec. 104.34; 28 CFR Sec. 35.130(d)]
- 15._____ Reasonable access to your programs or activities, if any, of: [See 34 CFR Sec. 104.38]
- a. preschool education?
 - b. day care?
 - c. adult education?
- 16._____ Furnishing auxiliary aids and services (unless it would result in an undue burden or a fundamental alteration in the program) to employees, students, parents, and members of the public who have disabilities to the extent necessary for communications with them to be equally effective as communications with other persons, such as: [See 28 CFR Sec. 35.160.164]
- a. telephone communications devices for the deaf (TDD's)?
 - b. signage with international symbol for accessibility?
- 17._____ Reasonable modifications generally in policies, practices, and procedures when necessary to avoid disability-based discrimination unless the district can prove that the modification would fundamentally alter the nature of the service, program or activity. [See 28 CFR Sec. 35.130(b)(7)]

Perry Zirkel, 1992

Eligibility Procedure Questions Under SECTION 504

The school district must implement procedures to provide FAPE to eligible students. The required procedures include referral, evaluation, placement, reevaluation, and notice of due process rights.

Referral

Q How does the district learn that a student may have a disability?

A The school district may learn that a student has or may have a disability by:

- Parent report;
- Medical or health referral;
- Review of individual student discipline and academic records;
- Teacher observation; and
- Enrollment information from previous schools.

When the district receives such information a Section 504 referral should be made.

504 Student Determination

Q How does the school district determine when a student is a qualified individual?

A When the district learns that a student may have a disability, the district must decide whether the student is a qualified individual under Section 504. Therefore, the school district must have procedures for determining whether a student has a physical or mental impairment which substantially limits one or more major life activities. These procedures should include a review process and a decision point which answers the following questions:

- Does the student have a physical or mental impairment?
- Does the impairment affect a major life activity?

If the referral provides evidence as to the possibility of a mental or physical impairment, the school district must proceed with a review of the student's current educational performance, medical and educational records and reports from parents, teachers and administrators to determine if further evaluation is necessary.

The determination of appropriate education for a qualified individual must be made by a group of persons knowledgeable about:

- The student's individual needs;
- The student's school history;
- The meaning of evaluation data; and
- Placement options.

Depending upon the type of disability present, the persons at this meeting may include a school counselor, school psychologist, or school nurse. Good sources of information include documentation of interventions in the general classroom, discipline records, scores on group achievement tests and special health care plans.

If the school district determines that the student does not have a physical or mental impairment which substantially limits one or more major life activities and takes no further action, the school district must ensure that parents or guardians are informed of their procedural process rights.

Evaluation

Q What are minimum evaluation procedures to determine 504 eligibility?

- A Once the school determines that a student is potentially a 504 qualified individual, the school must initiate its procedures for evaluation. At a minimum, evaluation procedures must ensure that:
- All tests and assessments are validated and administered by qualified personnel according to instructions provided by the publisher;
 - Tests are tailored to assess specific areas of educational need and not merely those which are designed to provide a single intelligence quotient; and
 - Tests measure the student's ability and do not reflect the student's impairment unless designed to measure a particular deficit.

Evaluations should include information from individually administered or analyzed:

- Achievement tests
- Intelligence tests
- Adaptive behavior assessments
- Teacher reports
- Written observation of student's performance in classroom by person other than the child's general education teacher
- Student academic history

For a student who is suspected of having cognitive delay, the evaluation should include information from:

- Aptitude and achievement tests
- Teacher recommendations
- Physical conditions
- Social or cultural background
- Adaptive behavior

For a student who has a severe articulation disorder the evaluation should include information from:

- A standardized speech and language assessment
- Classroom observation

For a student with a mobility impairment a physical therapy or occupational therapy evaluation may be necessary.

Development of Individualized Program

Q If a student is qualified and needs changes in the educational program, how does the district proceed?

- A After an evaluation is completed, a group of persons knowledgeable about the student must determine what changes, if any, in the educational program need to be made to ensure that this qualified individual has the opportunity to learn comparable to that for students without disabilities.

Assessment information must be considered by a group of people that includes:

- The student's general teacher;
- At least one person who is knowledgeable about the meaning of the evaluation data;
- An administrator or administrative designee; and
- Others who may provide relevant information about the student's educational performance.

The group should:

- Review the evaluation data;
- Assess the disability's affect on the student's education;
- Determine whether specialized services are needed; and if so
- Identify those services.

All assessment information should be summarized in writing and consideration of its impact documented. All proposed changes in the student's program should be written and provided to the parent along with notice of

procedural safeguards.

Placement

Q When determining student placement, what assurances must the district give?

A The district must ensure that its procedures afford that information is drawn from a variety of sources, documented, and carefully considered. The district must also ensure that each placement decision is made by a group of persons knowledgeable about the child, the meaning of the evaluation data, and placement options and that the qualified individual is education with students without disabilities to the maximum extent appropriate, to meet the needs of the student with disabilities. [34 CFR §104.35(c)]

The proposed changes in the qualified individual's program must be in the general educational environment unless the school district demonstrates that the qualified individual's education cannot be achieved satisfactorily even with the use of supplementary aids and services.

Section 504 does not require development of an IEP with annual goals and objectives. However, a written agreement for modifications for an individualized program is strongly recommended since the school district must document its efforts to meet evaluation and placement requirements under Section 504. Implementation of IEP procedures in accordance with IDEA is one means of meeting this requirement.

Reevaluation

Q Once the modifications are made, is the district required to reevaluate?

A The school district must establish procedures which ensure that, on a periodic basis and before any subsequent significant change in placement, the school district conducts an evaluation. The evaluation must address all components of the initial evaluation.

The district will be in compliance if students are reevaluated at least every three years or whenever a change in the student's condition warrants an evaluation. For example, if a student has a special health care problem and medication changed, the school district should review the student's current program and placement to determine if changes need to be made. If the changes are significant, a comprehensive reevaluation must be conducted.

A significant change in placement is defined as a change in the type of program or services offered to the student or a change in the restrictiveness of the program. Examples of significant change in placement include the following:

- Expulsion;
- Individual/serial suspensions
- Transfer of the student to home instruction;
- Transfer of the student from elementary to departmentalized middle school settings;
- Graduation from high school; and
- Major change in the student's classroom environment.

Procedural Safeguards

Q When does the school district need to give parents or guardians notice of their procedural safeguards?

A Before the school district changes a student's placement or modifies a student's educational program, the district must give notice to the parent. Consent is not required under Section 504, although it is advised.

Q How does the school district conduct a Section 504 impartial due process hearing?

A The school district must provide a due process hearing procedure for resolving disputes regarding the provision of a free appropriate public education under Section 504. Unlike IDEA, Section 504 regulations do NOT establish time lines for submission of a hearing request, require specific criteria for selection of hearing officers, define

"impartial hearing officer," nor set forth rules for conducting the hearing. However, similar processes in other regulations provide guidelines.

Transportation

Q Does the school district have to provide transportation to students with disabilities under Section 504?

A The school district must provide transportation to a student with disabilities if it is necessary to ensure the student has an opportunity to participate in the educational program. For example, if the student requires a van/bus with a lift for a wheelchair, the district must provide the service.

The district may not discriminate in provision of transportation to students with disabilities. Unless required by a student's individual needs, the length of the ride for a student with disabilities may not be longer than that of students without disabilities. Likewise, the transportation schedule for a student with a disability may not lengthen or shorten the school day.

If the district proposes to change or terminate a qualified individual's transportation for inappropriate behavior, the district must first determine the relationship between the student's behavior and the disability and whether the modifications were appropriate. The district may terminate transportation after appropriate evaluation and determinations are made. The parent or guardian must be provided with notice of rights.

If a student is placed by the district in an out-of-district program, the student must receive transportation to and from the program at no additional cost to the parent or guardian.

Residential Placement

Q If a student is placed in a private residential placement by the district in order to provide a free appropriate public education, does the district have to pay for room and board and educational costs?

A Residential placement must be provided at no cost to the parent or guardian only if the placement is necessary to provide a free appropriate public education [34 CFR §104.33(c)(3)]. If another public agency places the student in a residential placement, the school district in which the student lives must ensure that the student receives an appropriate education. The school district is not responsible for room and board costs but may be responsible for educational costs.

If the school district provides a free appropriate public education to a qualified individual but the **parent chooses** to place the child elsewhere, the school district is not responsible for the cost of the out-of-district placement under the provisions of Section 504.

Nonacademic Services

Q Does the school district have to make accommodations for students with disabilities so that they may participate in programs and activities such as music or computer class, lunch and recess periods, school field trips or assemblies?

A In providing nonacademic activities including meals, recess periods and extracurricular services, the school district must ensure that students with disabilities participate with students without disabilities to the maximum extent appropriate to the needs of the individual student with disabilities.

The district must provide an equal opportunity to participate in all classes which are appropriate to the student's program. The district may not counsel students with disabilities toward more restrictive programs or career objectives.

The district must provide an equal opportunity for students with disabilities to participate in physical education and athletics. Separate activities may be offered only if determined to be necessary for a student with disabilities. Students with disabilities may not be denied the opportunity to compete for teams or to participate in courses that

are not separate or different.

The quality of educational services provided for students with disabilities must be comparable to services provided for students without disabilities. Providing equitable opportunity may require different treatment. However, separate services are not allowed unless needed to provide equitable opportunity.

Equal Education Opportunity to Participate In/Benefit From IS NOT Same Treatment for All Students.

Program Accessibility

Q Does Section 504 require all buildings to be accessible to students with mobility disabilities?

A Facilities which were constructed prior to June 3, 1977, need not be made accessible if the program or activity in its entirety is readily accessible to persons with disabilities. Students with disabilities, however, must be afforded an equal opportunity to enjoy the full range of services offered by the district. To make a program accessible, the district can redesign equipment, reassign classes or other services to accessible buildings, assign aides to students, deliver services at alternate accessible sites, or alter existing facilities. If these methods are effective in achieving compliance, the district need not undertake major structural changes to buildings. However, the district may not deny access to programs because the facilities are not accessible to students with disabilities. Likewise, the district may not segregate disabled students from peers by placement in segregated, although accessible, facilities.

Buildings and building additions constructed since June 3, 1977, must be reviewed and a plan developed for achieving full program accessibility.

Section 504 Student Records

Q Is information obtained under Section 504 subject to the confidentiality requirements of the Family Educational Rights and Privacy Act (FERPA)?

A Section 504 records must be kept in accordance with Family Educational Rights and Privacy Act (FERPA) regulations which are located in 34 CFR §99.

Drugs and Alcohol

Q Are students who are currently using illegal drugs or alcohol protected under Section 504?

A The district may enforce its students with drugs or alcohol at school rules prohibiting the use, sale or possession of illegal drugs and alcohol if the rules are enforced consistently for all students. If a student, including a qualified individual with disabilities, is currently using drugs or alcohol, the district may use its normal disciplinary policies, including expulsion, as long as proper procedures are followed.

Students with Special Health Needs

Q Do students who receive medication at school or who have extensive health care qualify under Section 504?

A All students who have special health care needs should be considered for a 504 referral. Some of these students may qualify under Section 504. The district must make reasonable accommodations for delivery of special health care plans at school.

Students with Acquired Immune Deficiency Syndrome (AIDS), AIDS Related Complex (ARC), or infected with Human Immunodeficiency Virus (HIV Positive) qualify as disabled under Section 504. They qualify either as actually having an impairment substantially limiting a major life activity or as regarded a having such an impairment. Unless currently presenting a contagious risk due to the stage of the disease, the student should remain in the general classroom.

ADD/ADHD

Q Where do children with ADD/ADHD fit?

A There is a growing awareness in the education community that attention deficit disorder (ADD) and attention deficit hyperactive disorder (ADHD) can result in significant problems for students. While estimates of the prevalence of ADHD vary widely, it is generally believed that 3 to 5 percent of school-aged students may have significant educational problems related to this disorder. ADHD may be classified under IDEA as "other health impaired" in instances where ADHD is a chronic or acute health problem which results in limited alertness or vitality and which adversely affects educational performance. The district must provide general education, special education and related services to students who are not IDEA eligible, but who are qualified students with disabilities under Section 504. Such services may include modified behavior management programs, educational interventions, and provisions for administering medication.

Funding

Q Can the district use IDEA or State Special Education monies for identification, evaluation and services for Section 504?

A Section 504 is not a funding statute. Students eligible for services under Section 504 may not benefit from IDEA or state special education funds unless they are eligible for special education services under 92 NAC 51. 92 NAC 51 monies may be used for evaluation of a student only if it is believed that the child will also qualify for services under one of the special education disability categories as defined by IDEA and 92 NAC 51.

IDEA and Section 504 Comparison

	Section 504	IDEA
Type	A Civil Rights Act	An Education Act
Title	The Rehabilitation Act of 1973	Individuals with Disabilities Education Act
Responsibility	Regular education	Special education
Funding	State and local responsibility (no federal funding)	Funding provided by the federal, state, and local governments
Administrator	Section 504 Coordinator	Special education director or other appropriate administrator
Service Tool	None required but can use IEP or similar planning document	Individualized Education Program (IEP)
Purpose	A broad civil rights law which protects the rights of individuals with disabilities in programs and activities that receive federal financial assistance from the U.S. Department of Education	A federal funding statute whose purpose is to provide financial aid to states in their efforts to ensure adequate and appropriate services for students with disabilities
Population	Identifies student as disabled so long as she/he meets the definition of qualified persons with disabilities, i.e., has or has had a physical or mental impairment which substantially limits a major life activity, or is regarded as disabled by others	Identifies 13 categories of qualifying conditions
(FAPE) Free Appropriate Education	Both require the provision of a free appropriate education to students covered under each including individually designed instruction.	
	"Appropriate" means an education comparable to the education provided to nondisabled students	Requires the district to provide IEPs - "Appropriate education" means a program designed to provide "educational benefit."
Special Education vs Regular Education	A student is eligible so long as she/he meets the definition of qualified person with disabilities; i.e., currently has or has had a physical or mental impairment which substantially limits a major life activity, or is regarded as disabled by others. The student is not required to need special education in order to be protected.	A student is only eligible to receive special education and/or related services if the multidisciplinary team determines that the student is disabled under one of the thirteen qualifying conditions and requires special education
Accessibility	Has regulations regarding building and program accessibility, requiring that reasonable accommodations be made	Requires that modifications must be made if necessary to provide access to a free appropriate education
Procedural Safeguards	Both require notice to the parent or guardian with respect to identification, evaluation, and placement.	

	Section 504	IDEA
	Does not require written notice but a district would be wise to do so	Requires written notice
Evaluations	<ul style="list-style-type: none"> ● Evaluation draws on information from a variety of sources in the area of concern; decisions made by a group knowledgeable about the student, evaluation data, and placement options ● Does not require consent, only notice (however, best practice would provide for informed consent) ● Requires periodic reevaluations ● Reevaluation is required before a significant change in placement ● No provision for independent evaluations at district expense. District should consider any such evaluations presented 	<ul style="list-style-type: none"> ● A full comprehensive evaluation is required, assessing all areas related to the suspected disability. The student is evaluated by a multidisciplinary team or group ● Requires informed consent before an initial evaluation is conducted ● Requires reevaluations to be conducted at least every 3 years ● A reevaluation is not required before a significant change in placement. However, a review of current evaluation data, including progress monitoring, is strongly recommended. ● Provides for independent educational evaluation at district expense if parent disagrees with evaluation obtained by school or is ordered by a hearing officer.
Placement	Notice should be given under both Section 504 and IDEA	
	A meeting is not required for change of placement.	An IEP meeting must be conducted before any change of placement.
Grievance Procedure	Requires districts with more than 15 employees to designate an employee to be responsible for assuring district compliance with Section 504 and provide a grievance procedure for parents, students, and employees.	Does not require a grievance procedure, nor a compliance officer.

	Section 504	IDEA
Due Process	Both require districts to provide impartial; hearings for parents guardians who disagree with the identification, evaluation, or placement decisions.	
	Requires that the parent have an opportunity to participate and be represented by counsel	Delineates specific requirements
Exhaustion	Administrative hearing not required prior to OCR involvement or court action; compensatory damages possible	Requires the parent(s) or guardian(s) to pursue administrative hearing before seeking redress in the courts
Enforcement	Enforced by the U.S. Office of Civil Rights. No state monitoring, compliance resolution or funding involvement	Enforced by the U.S. Office of Special Education Programs. Compliance is monitored by the Nebraska State Department of Education, Special Education Office

EXAMPLES OF REASONABLE ACCOMMODATIONS

Accommodations must be tailored to meet individual needs and may change over time. (Resource for additional accommodations - A.D.D. WareHouse, 300 Northwest 70th Ave. Suite 102, Plantation, Florida, 33317; 1-800-233-9273)

- ✓ Provide a structured learning environment.
- ✓ Repeat and simplify instructions about in-class and homework assignments.
- ✓ Supplement verbal instructions with visual instructions.
- ✓ Use behavioral management techniques.
- ✓ Adjust class schedules.
- ✓ Modify test delivery.
- ✓ Use tape recorders, computer-aided instruction, and other audiovisual equipment.
- ✓ Select modified textbooks or workbooks.
- ✓ Tailor homework assignments.
- ✓ Use of one-to-one tutorials.
- ✓ Classroom paraeducators and note takers.
- ✓ Possible modification of nonacademic times such as lunchroom, recess and physical education.
- ✓ Change student seating.
- ✓ Change instructional pace.
- ✓ Change instructional methods.
- ✓ Change instructional materials.
- ✓ Provide peer tutoring.
- ✓ Implement behavioral/academic contracts.
- ✓ Utilize positive reinforcements (rewards).
- ✓ Utilize negative consequences (punishments).
- ✓ Utilize supplementary materials.

When Should a District Consider Section 504 Eligibility?

- ▶ When a **PARENT** frequently expresses a concern about their child's performance

- ▶ When **SUSPENSION OR EXPULSION** is being considered for any student.

- ▶ When **RETENTION** is being considered.

- ▶ When a student shows a pattern of **NOT BENEFITTING FROM INSTRUCTION.**

- ▶ When a student returns to school after a **SERIOUS ILLNESS OR INJURY.**

- ▶ When a student is **REFERRED FOR EVALUATION**, but it is determined not to do an evaluation under the IDEA.

- ▶ When a student is evaluated and is found **NOT TO QUALIFY FOR SPECIAL EDUCATION** services under the IDEA/RULE #51.

- ▶ When a student **EXHIBITS A CHRONIC HEALTH CONDITION.**

- ▶ When a student has been identified as having an **ATTENTION DEFICIT DISORDER (ADHD)**

- ▶ When a student is identified as "**AT RISK**" or exhibits the potential for dropping out of school.

- ▶ When **SUBSTANCE ABUSE** is an issue.

- ▶ When a **DISABILITY** of any kind is known or suspected.

- ▶ When a **NEW BUILDING OR REMODELING** is being considered.

REFERENCES

Parker, H., *ADAPT*, Impact Publication Inc., 1992.

Americans with Disabilities Act (ADA) of 1989, 29 USC §706(8).

Black, R., *Section 504 Administrative System*

Clarification of Policy to Address the Needs of Children with Attention Deficit Disorders within General and Special Education: A paper to Chief State School Officers. U.S. Department of Education; OSERS, September 16, 1991.

U.S. Department of Education Section 504 of the Rehabilitation Act of 1973, Title 34, Federal Register, Friday May 9, 1980.

Individuals with Disabilities Education Act of 1990, 20 USC §1400-1485.

The Availability of Damages and Equitable Remedies Under the IDEA, Section 504, and 42 USC §1983, Individuals with Disabilities Education Law Report - Special Report No. 7, LRP Publications, 1992.

Student Access: A resource Guide for Educators: Section 504 of the Rehabilitation Act of 1973, Council of Administrators of Special Education, Inc.

Utah Office of Education, Section 504 Guidelines for Educators (Primary document)

(Other sources cited throughout the document)

Appendices:

- *Sample Forms*
- *Sample Letters*
- *Sample Policies*
- *Section 504 Regulations*

Recommended usage is located in the box on each page

SECTION 504 POLICY STATEMENT

The school district shall periodically review the existing "nondiscrimination policy" with particular emphasis on Subpart D of Section 504. In some instances, the existing policy may be sufficient. In other instances, the district may wish to revise the policy or develop a separate statement concerning non-discrimination in education programs. As a minimum, the school district policy should include:

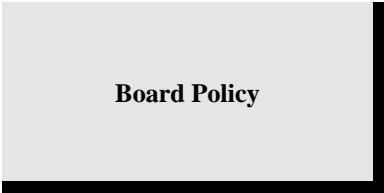
- An affirmative statement that the district does not discriminate on the basis of disability
- Reference to Section 504 of the Rehabilitation Act of 1973
- Reference to a referral/evaluation/placement process for students suspected of being disabled under Section 504.

_____ **PUBLIC SCHOOLS POLICY STATEMENT OF
NONDISCRIMINATION**

The _____ Public Schools does not discriminate on the basis of sex, race, national origin, marital status, age, or disability in the admission or access to, or treatment of, or employment in, its programs and activities.

It is the intent of the _____ Public Schools to comply with both the letter and the spirit of the law in making certain discrimination does not exist in its policies, regulations and operations. Grievance procedures have been established for anyone who feels discrimination has been shown by _____ Public Schools.

It is the intent of the _____ Public Schools to ensure that students who are regarded as possessing a disability (handicapped) within the definition of Section 504 of the Rehabilitation Act of 1973 are identified, evaluated and provided with appropriated educational services.



Notice of Nondiscrimination

Applicants for admission and employment, students, parents, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the _____
Public School District are hereby notified that this District does not discriminate on the basis of race, color, national origin, sex, age, or disability in admission or access to, or treatment or employment in, its programs and activities. Any person having inquiries concerning this district's compliance with the regulations implementing Title VI, Title IX, Americans with Disability Act, or Section 504 of the Rehabilitation Act of 1973, is directed to contact:

Superintendent

Date

District Address

Phone

City State Zip Code

**Published annually in
newspaper or other printed
source**

SECTION 504 OF THE REHABILITATION ACT OF 1973

Section 504 is a Federal Civil Rights Rehabilitation Act which prohibits discrimination against persons with a disability in any program receiving federal financial assistance. The Act defines a person with a disability as anyone who:

1. *has a mental or physical impairment which substantially limits one or more major life activities (major life activities include activities such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working);*
2. *has a record of such impairment; or*
3. *is regarded as having such an impairment.*

In order to fulfill obligations under Section 504, the _____ Public Schools has the responsibility to avoid discrimination in policies and practices regarding its personnel and students. No discrimination against any person with a disability should knowingly be permitted in any of the program and practices of the school system.

The school district has responsibilities under Section 504 (Part D), which include the obligation to identify, evaluate, and if the student is determined to be eligible under Section 504, to afford access to appropriate educational services.

If the parent or guardian disagrees with the determination made by the professional staff of the school district, he/she has a right to a hearing with an impartial hearing officer.

The Family Educational Rights and Privacy Act (FERPA) also specifies rights related to educational records. This Act gives the parent or guardian the right to: (1) inspect and review his/her child's educational records; (2) make copies of these records; (3) receive a list of all individuals having access to those records; (4) ask for an explanation of any item in the records; (5) ask for an amendment to any part of the record on the grounds that it is inaccurate, misleading, or violates the child's rights; and (6) a hearing on the issue if the school refuses to make the amendment.

If there are questions please feel free to contact _____
Section 504 Part D, Coordinator at the school (PH) _____.

**Published annually in
handbook or constituent
report**

TEACHER REFERRAL TO STUDENT ASSISTANCE TEAM

Student's Name: _____ DOB: / / Age: _____ Sex: M F

Parent's Name: _____ Grade or Subject: _____

School: _____ Teacher: _____

1. State reason for referral (to be completed by teacher):

2. Teacher perception of student's ability/performance:

A. Summarize student's strengths (academic, behavioral).

B. Summarize student's issues (academic, behavioral).

Please bring the following records to the initial consultation meeting: Cum Folder, Test Scores, Work Samples, Correspondence, Medical Information, etc.

PLAN OF ACTION (TO BE COMPLETED BY SCHOOL DESIGNEE)

Actions to be taken by Student Assistance Team designee:

- Develop and implement specific interventions
Explain: _____
- Refer to outside agency
- Continue to monitor (collect anecdotal, work samples, etc.)
- Parent Conference
- Administrative Action
- Other Interventions _____

Referral to Student Assistance Team

The following information should be submitted by: _____
(Date)

	Person Responsible	Date Completed
● Classroom observations	_____	_____
● Academic History	_____	_____
● Family/Social history	_____	_____
● Behavior Rating Scale-Parent(s)	_____	_____
● Behavior Rating Scale-Teacher(s)	_____	_____
● Anecdotal collection	_____	_____
● Work samples collection	_____	_____
● Student interview	_____	_____
● Other information	_____	_____

The Student Assistance Team will meet and review this student's file on:

Day of Week _____ Date _____ Time _____ Place _____

Persons to be contacted for the Student Assistance Team Meeting:

School Psychologist Teacher Parents Administrator
 Counselor Social Worker Special Education
 Other _____

Referral Form

**STUDENT ASSISTANCE TEAM
NOTICE TO PARENT(S)**

Dear Parent(s) or Guardian(s):

This letter is to inform you that we have concerns about your student's educational progress. We have attempted some interventions/accommodations for your student. They include:

We have scheduled a meeting to discuss your child's educational needs and further accommodations in order to ensure that your child has an appropriate education. We would very much appreciate your participation.

Meeting Date: _____

Time: _____

Location: _____

If you have any questions, or if this meeting date and time is not convenient for you, please call. We will discuss your questions or arrange a mutually convenient meeting time.

Sincerely,

Name

Position

Phone

**Send to parent at time of
initial SAT**

STUDENT AND PARENT RIGHTS IN IDENTIFICATION, EVALUATION AND PLACEMENT

The following is a description of student and parent rights granted by Section 504 of the Civil Rights Rehabilitation Act of 1973. The intent of the law is to keep you fully informed concerning decisions about your child and to advise you of your rights if you disagree with any of these decisions.

YOU HAVE THE RIGHT TO:

1. Have your child take part in, and receive benefits from public education programs without discrimination based on a disability.
2. Have the school district advise you as to your rights under federal law.
3. Receive notice with respect to identification, evaluation, or placement of your child.
4. Have your child receive a free appropriate public education. This includes the right to be educated with other students to the maximum extent appropriate. It also includes the right to have the school district make reasonable accommodations to allow your child an equal opportunity to participate in school and school-related activities.
5. Have your child educated in facilities and receive services comparable to those provided students without disabilities.
6. Have your child receive special education and related services if she/he is found to be eligible under the Individuals with Disabilities Education Act (IDEA) (PL 101-476), or to receive reasonable accommodations under Section 504 of the Rehabilitation Act.
7. Have evaluation, educational, and placement decisions made based upon a variety of information sources, and by individuals who know the student, the evaluation data, and placement options.
8. Have transportation provided to a school placement setting at no greater cost to you than would be incurred if the student were placed in a program operated by the school district.
9. Give your child an equal opportunity to participate in nonacademic and extracurricular activities offered by the school district.
10. Examine all relevant records related to decisions regarding your child's identification, evaluation, educational program, and placement.
11. Obtain copies of educational records at a reasonable cost if the fee would effectively deny you access to the records.
12. Receive a response from the school district to reasonable requests for explanations and interpretations of your child's records.
13. Request amendment of your child's educational records if there is reasonable cause to believe that they are inaccurate, misleading or otherwise in violation of the privacy rights of your child. If the school district refuses this request, it shall notify you within a reasonable time, and advise you of the right to a hearing.
14. Request mediation or an impartial due process hearing related to decisions regarding your child's identification, evaluation, educational program, or placement. You and your child may take part in the hearing and have an attorney represent you.
15. Ask for payment of reasonable attorney fees if you are successful on your claim.
16. File a local grievance.

The person in the school district who is responsible for Section 504 Part D compliance is:

Name

Phone

Place on the back of the Notice To Parent as well as other forms given to parent at the time of identification, evaluation, and placement

SECTION 504 EVALUATION SUMMARY

Date: _____

Student: _____ Birth date: _____

Address: _____ Phone: _____

School: _____ Grade: _____

Parent(s)/Guardian(s): _____

PARTICIPANTS - Staff knowledgeable about the student and the results of the evaluation data.

SUMMARY OF EVALUATION DATA - Information from a variety of sources, including as relevant, aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior.

DETERMINATION OF WHETHER THE STUDENT HAS A DISABILITY UNDER SECTION 504

- _____ The student does not have a physical or mental impairment which substantially limits one or more major life activities, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
- _____ The student has a physical or mental impairment which substantially limits one or more major life activities, such as caring for one's self performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working and requires modifications/accommodations **but:**
- _____ Student does **not** have a disability under 92 NAC 51, Regulations and Standards for Special Education Programs.
- _____ Student does not need special education.

**If MDT report is not used,
recommend using this form**

504 ACCOMMODATION PLAN

Name: _____ Date: _____

Parent's Name: _____ Date of Birth: _____

School: _____ Teacher: _____ Grade: _____

1. Describe the nature of the concern: _____

2. Describe the basis for the determination of a disability (if any): _____

3. Describe how the disability affects a major life activity: _____

4. The Student Assistance Team has reviewed the files of the above named student and concludes that he/she meets the classification as a qualified individual with a disability under Section 504 of the Rehabilitation Act of 1973. In accordance with the Section 504 guidelines, the school has agreed to make reasonable accommodations and address the student's individual needs by:

PHYSICAL ARRANGEMENT OF ROOM:

- _____ seating student near the teacher
- _____ seating student near a positive role model
- _____ standing near the student when giving directions or presenting lessons
- _____ avoiding distracting stimuli (air conditioner, high traffic area, etc.)
- _____ increasing the distance between the desks
- _____ *Additional accommodations:* _____

LESSON PRESENTATION:

- _____ pairing students to check work
- _____ writing key points on the board
- _____ providing peer tutoring
- _____ providing visual aids
- _____ providing peer note taker
- _____ making sure directions are understood
- _____ including a variety of activities during each lesson
- _____ breaking longer presentations into shorter segments
- _____ *Additional accommodations:* _____
- _____ providing written outline
- _____ allowing student to tape record lessons
- _____ having child review key points orally
- _____ teaching through multi-sensory modes
- _____ using computer-assisted instruction

ASSIGNMENTS/WORKSHEETS:

- _____ giving extra time to complete tasks
- _____ simplify complex directions
- _____ handing worksheets out one at a time
- _____ reducing the reading level of the assignments
- _____ requiring fewer correct responses to achieve grade
- _____ allowing student to tape record assignments/homework
- _____ providing a structured routine in written form
- _____ providing study skills training/learning strategies
- _____ giving frequent short quizzes and avoiding long tests
- _____ shortening assignments; breaking work into smaller segments
- _____ allowing typewritten or computer printed assignments
- _____ *Additional accommodations:* _____
- _____ using self-monitoring devices
- _____ reducing homework assignments
- _____ not grading handwriting

(OVER)

Use to document plan for 504 student

(Accommodation Plan, Con't)

TEST TAKING:

- allowing open book exams
 - giving exam orally
 - giving take home tests
 - using more objective items
 - allowing student to give test answers on tape recorder
 - Additional Accommodations:* _____
- giving frequent short quizzes, not long exams
 - allowing extra time for exam
 - reading test item to student

ORGANIZATION:

- providing peer assistance with organizational skills
- assigning volunteer homework buddy
- allowing student to have an extra set of books at home
- sending daily/weekly progress reports home
- developing a reward system for in-school work and home work completion
- providing student with a home work assignment notebook
- teacher and parent initial home work assignment notebook (home-school communication)
- Additional Accommodations:* _____

BEHAVIORS:

- praising specific behaviors
 - using self-monitoring strategies
 - giving extra privileges and rewards
 - keeping classroom rules simple and clear
 - making "prudent use" of negative consequences
 - allowing for short breaks between assignments
 - cueing student to stay on task (nonverbal signal)
 - marking student's correct answers, not his mistakes
 - implementing a classroom behavior management system
 - allowing student time out of seat to run errands, etc.
 - ignoring inappropriate behaviors not drastically outside classroom limits
 - Additional Accommodations:* _____
- allowing legitimate movement
 - contracting with the student
 - increasing the immediacy of rewards
 - implementing time-out procedures

MEDICATION:

Name of Physician: _____ Phone: _____
Medication(s): _____ Schedule: _____
Monitoring of Medication(s): _____ daily _____ weekly _____ as needed basis
Administered By: _____

SPECIAL CONSIDERATIONS:

- suggesting parenting program(s)
 - monitoring student closely on field trip
 - inservicing teacher(s) on child's disability
 - providing social skills group experiences
 - developing intervention strategies for transitional periods (e.g., cafeteria, physical education, recess)
- alerting bus driver
 - suggesting agency involvement
 - providing group/individual counseling

Comments: _____

Participants: (name and title)

Case Manager's signature: _____

(Accommodation Plan, Con't)

504 Record of Annual Review

Student's Name: _____ DOB: _____ Age: _____ Sex: M E Grade: _____

Parent's Name: _____ Parent Phone: _____

School: _____ Reevaluation Date: _____

Case Manager: _____ Review Date(s): _____

AREA(S) OF DIFFICULTY	ACCOMMODATIONS (Refer to 504 Accommodation Plan)	Starting Date	Person Responsible	OUTCOME

**NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS AND
ACTIVITIES RECEIVING OR BENEFITING FROM
FEDERAL FINANCIAL ASSISTANCE**

34 C.F.R. Part 104

SUBPART A -- GENERAL PROVISIONS

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- 104.2 Application
- 104.3 Definitions
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- 104.7 Designation of responsible employee and adoption of grievance procedures
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- 104.9 Administrative requirements for small recipients
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SUBPART D -- PRESCHOOL, ELEMENTARY, AND SECONDARY EDUCATION

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- 104.32 Location and notification
- 104.33 Free appropriate public education
- 104.34 Educational setting
- 104.35 Evaluation and placement
- 104.36 Procedural safeguards
- 104.37 Nonacademic services
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SUBPART E -- POSTSECONDARY EDUCATION

- 104.41 Application of this subpart
- 104.42 Admissions and recruitment
- 104.43 Treatment of students; general
- 104.44 Academic adjustments
- 104.45 Housing
- 104.46 Financial and employment assistance to students
- 104.47 Nonacademic services

SUBPART F -- HEALTH, WELFARE, AND SOCIAL SERVICES

- 104.51 Application of this subpart
- 104.52 Health, welfare, and other social services
- 104.53 Drug and alcohol addicts
- 104.54 Education of institutionalized persons

SUBPART G -- PROCEDURES

- 104.61 Procedures

(Authority: Sec. 504, Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794); sec III(a), Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 88 Stat. 1619 (29 U.S.C. 706); sec. 606, Education of the Handicapped Act (20 U.S.C. 1405), as amended by Pub. L. 94-142, 89 Stat. 795).
[Source: 45 FR 30936, May 9, 1980, unless otherwise noted]

Note: For an interpretation document affecting Part 104, see 46 FR 4912, Jan. 19, 1981. The effective date of the interpretation was deferred to March 30, 1981, at 46 FR 12495, Feb. 17, 1981. The effective date was again deferred to May 10, 1981, at 46 FR 18975, March 27, 1981, and deferred until further notice at 46 FR 25614, May 8, 1981.

**NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS AND
ACTIVITIES RECEIVING OR BENEFITING FROM
FEDERAL FINANCIAL ASSISTANCE**

34 C.F.R. Part 104

SUBPART A -- GENERAL PROVISIONS

Sec. 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.

Sec. 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.

Sec. 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." (l)"Handicapped persons" means any person who (i) has a physical or mental impairment, 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.

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

(i) "Physical or mental impairment" means (A) any physiological disorder or condition, cosmetic disfigurement, or 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; hermic and lymphatic; skin; and endocrine; or (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

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

(iii) "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.

(iv) "Is regarded as having an impairment" means (A) has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitations; (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; or (C) has none of the impairments defined in paragraph (j)(2)(i) of this section but is treated by a recipient as having such an impairment.

(k) "Qualified handicapped persons" means:

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

(2) 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 the Handicapped Act, and

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

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

(l) "Handicap" means any condition or characteristic that renders a person a handicapped person as defined in paragraph (j) of this section.

Sec. 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.

(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 the 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 defeating 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.

Sec. 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 benefit.

(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.

Sec. 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

(1) 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.

Sec. 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.

Sec. 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 professional 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 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.

Sec. 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.

Sec. 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 B -- EMPLOYMENT PRACTICES

Sec. 104.11 Discrimination prohibited

(a) General

(1) No qualified handicapped person shall, on the basis of handicap, be subject to discrimination in employment under any program or activity to which this part applies.

(2) A recipient that receives assistance under the Education of the Handicapped Act shall take positive steps to employ and advance in employment qualified handicapped persons in programs assisted under that Act.

(3) A recipient shall make all decisions concerning employment under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(4) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. The relationship referred to in this subparagraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

(b) Specific activities

The provisions of this subpart apply to:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities including social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

(c) A recipient's obligation to comply with this subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

Sec. 104.12 Reasonable accommodation

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(b) Reasonable accommodation may include: (1) making facilities used by employees readily accessible to and usable by handicapped persons, and (2) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a

recipient's program, factors to be considered include:

- (1) The overall size of the recipient's program with respect to number of employees, number and type of facilities, and size of budget;
- (2) The type of the recipient's operation, including the composition and structure of the recipient's workforce; and
- (3) The nature and cost of the accommodation needed.

(d) A recipient may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

Sec. 104.13 Employment criteria

(a) A recipient may not make use of any employment test or other selection criterion that screens out or tends to screen out handicapped persons or any class of handicapped persons unless: (1) the test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question, and (2) alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown by the Director to be available.

(b) A recipient shall select and administer tests concerning employment so as best to ensure that, when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflecting the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

Sec. 104.14 Preemployment inquiries

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a preemployment medical examination or may not make preemployment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions. (b) When a recipient is taking remedial action to correct the effects of past discrimination pursuant to Reg. 104.6(a), when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to Reg. 104.6(b), or when a recipient is taking affirmative action pursuant to section 503 of the Act, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped. Provided, That:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.

(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty, Provided, That: (1) All entering employees are subjected to such an examination regardless of handicap, and (2) the results of such an examination are used only in accordance with the requirements of this part.

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:

(1) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations;

(2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(3) Government officials investigating compliance with the Act shall be provided relevant information upon request.

SUBPART C -- PROGRAM ACCESSIBILITY

Sec. 104.21 Discrimination prohibited

No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.

Sec. 104.22 Existing facilities

(a) Program accessibility

A recipient shall operate each program or activity to which this part applies so that the program or activity, when viewed in its entirety, is readily accessible to handicapped persons. This paragraph does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

(b) Methods

A recipient may comply with the requirements of paragraph (a) of this section through such means as redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of health, welfare, or facilities and construction of new facilities in conformance with the requirements of Reg. 104.23, or any other methods that result in making its program or activity accessible to handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among available methods for meeting the requirement of paragraph (a) of this section, a recipient shall give priority to those methods that offer programs and activities to handicapped persons in the most integrated setting appropriate.

(c) Small health, welfare, or other social service providers

If a recipient with fewer than fifteen employees that provides health, welfare, or other social services finds, after consultation with a handicapped person seeking its services, that there is no method of complying with paragraph (a) of this section other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible.

(d) Time period

A recipient shall comply with the requirement of paragraph (a) of this section within sixty days of the effective date of this part except that where structural changes in facilities are necessary, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(e) Transition plan

In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum:

- (1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to handicapped persons;
- (2) Describe in detail the methods that will be used to make the facilities accessible;
- (3) Specify the schedule for taking the steps necessary to achieve full program accessibility and, if the time period of the transition plan is longer than one year, identify the steps that will be taken during each year of the transition period; and
- (4) Indicate the person responsible for implementation of the plan.

(f) Notice

The recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by handicapped persons.

Sec. 104.23 New construction

(a) Design and construction

Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by handicapped persons, if the construction was commenced after the effective date of this part.

(b) Alteration

Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this part in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by handicapped persons.

(c) American National Standards Institute accessibility standards

Design, construction, or alteration of facilities in conformance with the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," published by the American National Standards Institute, Inc. (ANSI A117.1-1961 (R1971))¹ which is incorporated by reference in this part, shall constitute compliance with paragraphs (a) and (b) of this section. Departures from particular requirements of those standards by the use of other methods shall be permitted when it is clearly evidence that equivalent access to the facility is thereby provided. Incorporation by reference provisions approved by the Director of the Federal Register, May 27, 1978. Incorporated documents are on file at the Office of the Federal Register.

SUBPART D -- PRESCHOOL, ELEMENTARY, AND SECONDARY EDUCATION

Sec. 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.

Sec. 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.

Sec. 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.

¹Copies of the standards are obtainable from American National Standards Institute, Inc., 1430 Broadway, New York, N.Y. 10018. (45 FR 30936, May 9, 1980; 45 FR 37426, June 3, 1980)120

(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 those 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 nonmedical 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.

Sec. 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 nonhandicapped 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.

Sec. 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 up information from a variety of sources, including aptitude and achievements 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 decisions 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.

Sec. 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 guardians 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.

Sec. 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 Reg. 104.34 and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

Sec. 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.

Sec. 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

Sec. 140.41 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.

Sec. 140.42 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.

(3) Shall assure itself that (i) admission tests are selected and administered so as best to ensure that, when a test is administered to an application who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the applicant's impaired sensory, manual, or speaking skills (except where those

skills are the factors that the test purports to measure); (ii) admissions tests that are designed for persons with impaired sensory, manual, or speaking skills are offered as often and in as timely a manner as are other admissions tests; and (iii) admissions tests are administered in facilities that, on the whole, are accessible to handicapped persons; and

(4) Except as provided in paragraph (c) of this section, may not make preadmission inquiry as to whether an applicant for admission is a handicapped person but, after admission, may make inquiries on a confidential basis as to handicaps that may require accommodation.

(c) Preadmission inquiry exception

When a recipient is taking remedial action to correct the effects of past discrimination pursuant to Reg. 104.6(a) or when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to Reg. 104.6(b), the recipient may invite applicants for admission to indicate whether and to what extent they are handicapped. Provided, That:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will be used only in accordance with this part.

(d) Validity studies

For the purpose of paragraph (b)(2) of this section, a recipient may base prediction equations on first year grades, but shall conduct periodic validity studies against the criterion of overall success in the education program or activity in question in order to monitor the general validity of the test scores.

Sec. 104.43 Treatment of students; general

(a) No qualified handicapped student shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic, research, occupational training, housing, health insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, or other postsecondary education program or activity to which this subpart applies.

(b) A recipient to which this subpart applies that considers participation by students in education programs or activities not operated wholly by the recipient as part of, or equivalent to, an education program or activity operated by the recipient shall assure itself that the other education program or activity, as a whole, provides an equal opportunity for the participation of qualified handicapped persons.

(c) A recipient to which this subpart applies may not, on the basis of handicap, exclude any qualified handicapped student from any course, course of study, or other part of its education program or activity.

(d) A recipient to which this subpart applies shall operate its programs and activities in the most integrated setting appropriate.

Sec. 104.44 Academic adjustments

(a) Academic requirements

A recipient to which this subpart applies shall make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of handicap, against a qualified handicapped applicant or student. Academic requirements that the recipient can demonstrate are essential to the program of instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this section. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of the degree requirements, and adaptation of the manner in which specific courses are conducted.

(b) Other rules

A recipient to which this subpart applies may not impose upon handicapped students other rules, such as the prohibition of tape recorders in classrooms or of dog guides in campus buildings, that have the effect of limiting the participation of handicapped students in the recipient's education program or activity.

(c) Course examinations

In its course examinations or other procedures for evaluating students' academic achievement in its program, a recipient to which this subpart applies shall provide such methods for evaluating the achievement of students who have a handicap that impairs sensory, manual, or speaking skills (except

where such skills are the factors that the test purports to measure).

(d) Auxiliary aids

(1) A recipient to which this subpart applies shall take such steps as are necessary to ensure that no handicapped student is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under the education program or activity operated by the recipient because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills.

(2) Auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions. Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

Sec. 104.45 Housing

(a) Housing provided by the recipient

A recipient that provides housing to its nonhandicapped students shall provide comparable, convenient, and accessible housing to handicapped students at the same cost as to others. At the end of the transition period provided for in Subpart C, such housing shall be available in sufficient quantity and variety so that the scope of handicapped students' choice of living accommodation is, as a whole, comparable to that of nonhandicapped students.

(b) Other housing

A recipient that assists any agency, organization, or person in making housing available to any of its students shall take such action as may be necessary to assure itself that such housing is, as a whole, made available in a manner that does not result in discrimination on the basis of handicap.

Sec. 104.46 Financial and employment assistance to students

(a) Provision of financial assistance

(1) In providing financial assistance to qualified handicapped persons, a recipient to which this subpart applies may not, (i) on the basis of handicap, provide less assistance than is provided to nonhandicapped persons, limit eligibility for assistance, or otherwise discriminate or (ii) assist any entity or person that provides assistance to any of the recipient's students in a manner that discriminates against qualified handicapped persons on the basis of handicap.

(2) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established under wills, trusts, bequests, or similar legal instruments that require awards to be made on the basis of factors that discriminate or have the effect of discriminating on the basis of handicap only if the overall effect of the award of scholarships, fellowships, and other forms of financial assistance is not discriminatory on the basis of handicap.

(b) Assistance in making available outside employment

A recipient that assists any agency, organization, or person in providing employment opportunities to any of its students shall assure itself that such employment opportunities, as a whole, are made available in a manner that would not violate Subpart B if they were provided by the recipient.

(c) Employment of students by recipients

A recipient that employs any of its students may not do so in a manner that violates Subpart B.

Sec. 104.47 Nonacademic services

(a) 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 intercollegiate, 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 only if separation or differentiation is consistent with the requirements of Reg. 1044.43(d) and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

(b) Counseling and placement 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 abilities. This requirement does not preclude a recipient from providing factual information about licensing and certification requirements that may present obstacles to handicapped persons in their pursuit of particular careers.

(c) Social organizations

A recipient that provides significant assistance to fraternities, sororities, or similar organizations shall assure itself that the membership practices of such organizations do not permit discrimination otherwise prohibited by this subpart.

SUBPART F -- HEALTH, WELFARE, AND SOCIAL SERVICES

Sec. 104.51 Application of this subpart

Subpart F applies to health, welfare, and other social service programs and activities that receive 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.

Sec. 104.52 Health, welfare, and other social services

(a) General

In providing health, welfare, or other social services or benefits, a recipient may not, on the basis of handicap:

- (1) Deny a qualified handicapped person these benefits or services;
- (2) Afford a qualified handicapped person an opportunity to receive benefits or services that is not equal to that offered nonhandicapped persons;
- (3) Provide a qualified handicapped person with benefits or services that are not as effective (as defined in Reg. 104.49b) as the benefits or services provided to others;
- (4) Provide benefits or services in a manner that limits or has the effect of limiting the participation of qualified handicapped persons; or
- (5) Provide different or separate benefits or services to handicapped persons except where necessary to provide qualified handicapped persons with benefits and services that are as effective as those provided to others.

(b) Notice

A recipient that provides notice concerning benefits or services or written material concerning waivers of rights or consent to treatment shall take such steps as are necessary to ensure that qualified handicapped persons, including those with impaired sensory or speaking skills, are not denied effective notice because of their handicap.

(c) Emergency treatment for the hearing impaired

A recipient hospital that provides health services or benefits shall establish a procedure for effective communication with persons with impaired hearing for the purpose of providing emergency health care.

(d) Auxiliary aids

- (1) A recipient to which this subpart applies that employs fifteen or more persons shall provide appropriate auxiliary aids to persons with impaired sensory, manual, or speaking skills, where necessary to afford such persons an equal opportunity to benefit from the service in question.
- (2) The Assistant Secretary may require recipients with fewer than fifteen employees to provide auxiliary aids where the provisions of aids would not significantly impair the ability of the recipient to provide its benefits or services.
- (3) For the purpose of this paragraph, auxiliary aids may include braille and taped material, interpreters, and other aids for persons with impaired hearing or vision.

Sec. 104.53 Drug and alcohol addicts

A recipient to which this subpart applies that operates a general hospital or outpatient facility may not discriminate in admission or treatment against a drug or alcohol abuser or alcoholic who is suffering from a medical condition, because of the person's drug or alcohol abuse or alcoholism.

Sec. 104.54 Education of institutionalized persons

A recipient to which this subpart applies and that operates or supervises a program or activity for persons who are institutionalized because of

handicap shall ensure that each qualified handicapped person, as defined in Reg. 104.3(k)(2), in its program or activity is provided an appropriate education, as defined in Reg. 104.33(b). Nothing in this section shall be interpreted as altering in any way the obligations of recipients under Subpart D.

SUBPART G -- PROCEDURES

Sec. 104.61 Procedures

The procedural provisions applicable to title VI of the Civil Rights Act of 1964 apply to this part. These procedures are found in Regs. 100.6-100.10 and Part 101 of this Title.

Other Accessibility Standards

Uniform Federal Accessibility Standards

The uniform standards for the design, construction, and alteration of buildings so that physically handicapped persons will have access to and use of them in accordance with the Architectural Barriers Act, 42 U.S.C. 4151-4157.

For further information contact General Services Administration, 18th and F Streets, N.W., Room 3044, Washington, D.C. 20405, (202)697-8661.

Accessibility Standards for Children's Environments

Recommendations prepared by the Center for Accessible Housing (North Carolina State University, 219 Oberlin Road, Raleigh, North Carolina 27695-8613) for the Architectural and Transportation Barriers Compliance Board, Washington, D.C. These recommended standards were written as a supplement to the Uniform Federal Accessibility Standards. They contain specifications for children with disabilities, and supplement identical adult specifications in the Uniform Federal Accessibility Standards.



Attention Deficit Hyperactivity Disorder



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Recommended School Assessment Procedures For Attention Deficit Hyperactivity Disorder

Joseph H. Evans, Ph.D.
Gregg F. Wright, M.D.

Introduction

In the educational realm, responsibility for the assessment of attention deficit hyperactivity disorder (ADHD) has been assigned to school personnel (Joint Memorandum from the Federal Offices of Special Education and Rehabilitative Services, Civil Rights, and Elementary and Secondary Education, September 16, 1991). As estimates indicate that 3% to 5% of the population may be affected with ADHD (Barkley, 1991), this assignment represents a significant responsibility in terms of person power and assigned expertise for school systems.

Current best practices in the assessment of ADHD recommend a multi-method, multidisciplinary approach (DuPaul, 1992). Considering that as many as 20% of children may evidence enough behaviors to warrant some type of evaluation for ADHD (Barkley, 1990), there is a need for assessment to be conducted at a number of levels to ensure the efficient use of teacher, special educator, and school psychologist, and other related educational personnel time. The following presents a multi-level process designed to provide a screening process for ADHD as well as procedures for arriving at a determination of a disability and the need for services. Measures included in an ADHD assessment need to examine a student's behavior across both home and school settings and generally should include behavior rating scales from parents and teachers as well as direct observation in the classroom setting. Other measures may be included that provide cognitive and/or achievement screening to rule out the presence of developmental disabilities and/or other conditions which might be causing problems with attention and/or hyperactivity.

In conducting an ADHD assessment, DuPaul (1992) has emphasized that five major questions must be addressed:

1. Does the child exhibit a significant number of behavioral characteristics of ADHD according to parent and teacher report?
2. Does the child exhibit ADHD behaviors at a frequency that is significantly greater than that demonstrated by children of the same gender and mental age?
3. At what age did the child begin demonstrating significant ADHD-related behaviors and are these behaviors currently evident across many situations?
4. Is the child's functioning at school, at home, and with peers significantly impaired?
5. Are there other possible deficits (learning disabilities) or factors (e.g., teacher intolerance for active behavior) which could account for the display of ADHD behaviors?

DSM-III-R Diagnostic Criteria

The Diagnostic and Statistical Manual of Mental Disorders (American Psychiatric Association, 1987) indicates that ADHD behaviors should first occur before the age of seven, should not meet criteria for a pervasive developmental disorder and includes the following as diagnostic criteria for ADHD:

A disturbance of at least six months during which at least eight of the following are present:

1. Often fidgets with hands or feet or squirms in seat (in adolescents, may be limited to subjective feelings of restlessness).
2. Has difficulty remaining seated when required to do so.
3. Is easily distracted by extraneous stimuli.
4. Has difficulty awaiting turn in games or group situations.
5. Often blurts out answers to questions before they have been completed.
6. Has difficulty following through on instructions from others (not due to oppositional behavior or failure of comprehension).
7. Has difficulty sustaining attention in tasks or play activities.
8. Often shifts from one uncompleted activity to another.
9. Has difficulty playing quietly.
10. Often talks excessively.
11. Often interrupts or intrudes on others (e.g., butts into other children's games).
12. Often does not seem to listen to what is being said to him or her.
13. Often loses things necessary for tasks or activities at school or at home (e.g., toys, pencils, books, assignments).
14. Often engages in physically dangerous activities without considering possible consequences (not for the purpose of thrill-seeking), e.g., runs into street without looking.

Level I Screening

Students who demonstrate difficulties with attention in the classroom, hyperactive behavior and/or impulsivity are typically referred to the school

building's Student Assistance Team (SAT) for an initial discussion, review, and/or attempts to rectify concerns brought forward by teachers and/or parents. If initial screening for ADHD should occur. DuPaul suggests, as an initial step, that the ADHD Rating Scale (DuPaul, 1990) be administered at this Level to the teacher(s) of the target student as a method of screening students for consideration of an ADHD assessment (see Figure 1). This scale evaluates the presence or absence of the 14 ADHD behaviors described earlier in this document along a 4-point continuum of "Not At All" (0) to "Very Much" (3). To reach consideration for further diagnostic assessment, a student's behavior should reflect the presence of at least eight of the behaviors listed with frequency ratings of "Pretty Much" (2) to "Very Much" (3). If a student's behaviors are not rated as significant on this scale there may be other causal factors or conditions that need to be examined that may be causing ADHD-like behaviors. A significant percentage of students suspected of having ADHD can be screened out at this point in the overall assessment process.

ADHD School Diagnostic Process Level ONE: Screening Procedures

**Student Assistance Team
(SAT)**

Problem Solving	Evaluation of Results	Screening for ADHD
<ul style="list-style-type: none"> ● Presentation by Parents/Teachers ● Problem Strategy and Recommendations ● Implementation of Strategy 	<ul style="list-style-type: none"> ● Data Collected by SAT ● Data Analysis and suggestions ● Recycle with new strategies (Optional) 	<ul style="list-style-type: none"> ● ADHD Rating Scale completed by teacher to indicate number and intensity of behaviors

(Figure 1)

Level II Screening

In the case that a student's behavior is rated as having a significant number and intensity of behaviors, Level II of the diagnostic process would be initiated. As indicated earlier, multi-method assessment is recommended with emphasis upon the collection of assessment data

from home, school, and observational sources. It is recommended that a minimum of two procedures from each of the evaluation areas (as described in Figure 1) be employed in Level II of the assessment process. As can be seen, Level II assessment procedures are divided into three areas: Parent Home Ratings, Observation/Records Review, and School/Teacher Ratings. For more details on specific ADHD measures refer to the Annotated Assessment information beginning on page 75.

ADHD School Diagnostic Process

Level TWO: Screening Procedures

Student Assistance Team SAT
--

Parent Measures	Observation/Record Review	School Measures
<ul style="list-style-type: none"> ● Connors Parent Rating Scales ● ADHD Rating Scale ● Child Behavior Checklist ● Home Situation Q-R ● ADDES (Home) 	<ul style="list-style-type: none"> ● Review of ability and achievement data (group or individual) ● Observation with peer comparison <ul style="list-style-type: none"> ✓ On-task behavior ✓ Out of seat ✓ Vocalizing ✓ Fidgeting ✓ Playing with objects 	<ul style="list-style-type: none"> ● Connors Teacher Rating Scale ● ACTeRs Scale ● School Situation Q-R ● ADDES (School) ● CBC Rating Scale

(Figure 2)

Parent/Home Ratings -- A number of well-researched and standardized instruments are available for assessment of ADHD related behaviors in the home environment. As parents are most familiar with their children's behaviors, it is important to involve them in the assessment of ADHD, especially in light of the fact that this condition is a pervasive disorder affecting behavior across environments (i.e., both home and school settings).

It is recommended that a minimum of two parent rating scales be employed in assessing ADHD at this Level. The following are standardized measures that have been used in the assessment of ADHD and which are available through commercial testing corporations and/or the research literature:

- Connors' parent Rating Scales (Connors, 1990)
- Child Behavior Checklist (Achenbach & Edelbrock, 1983)
- Home Situations Questionnaire (DuPaul, 1990)

- Attention Deficit Disorder Evaluation Scale - Home Version (McCartney, 1989)
- ADH Rating Scale (DuPaul, 1990)

Observation/Records Review -- A diagnosis of ADHD may co-exist with other disabilities (e.g., it is estimated that as many as 25% to 40% of students with ADHD also have learning disabilities. At the same time, an ADHD diagnosis requires the ruling out of pervasive developmental disorder and/or other conditions that may account for problems with attention, hyperactive behavior, and/or impulsiveness. Additionally, work habits of students documented by teachers in preceding grades can provide valuable sources of information regarding whether ADHD behaviors have been prevalent during preceding years. It is recommended that a student record review be conducted during which the following are examined and summarized:

- Achievement scores from group or individualized standardized testing.
- Teacher ratings of work habits.
- If available, any group or individualized intellectual testing that may have been conducted.
- Any student assistance team referral information and/or records of intervention efforts.

Another important component of Level II screening for ADHD is the collection of observational data. It is recommended that a minimum of one observational session be conducted in the classroom setting by a staff member familiar with time interval behavior recording systems. Data collection should occur for a minimum of 20 minutes and should also include data obtained on at least one other comparison student in the same classroom setting. Observational data is collected to determine the degree to which the target student is significantly different from his/her average peers in the actual academic setting.

Barkley has developed an observational data collection procedure which entails the gathering of data on the following variables:

- On-task behavior
- Out-of-seat occurrences
- Vocalizing
- Fidgeting
- Playing with objects (see Barkley (1990) for further definitions and procedural guidelines).

It is essential that comparison data be collected in order to determine whether behaviors are specific to the individual target student or are found in many students in the classroom. In the latter case, such behaviors, if present across many students may be a symptom of classroom management issues rather than ADHD.

School-Teacher Measures -- In providing information regarding ADHD behaviors, the gathering of information from teachers is of vital importance. Classroom teachers have the distinct advantage of having years of experience and potentially hundreds of comparison students from which to compare behaviors of specific student. It is, again, suggested that a minimum of two of the following types of ratings scales be employed at Level II of the assessment process:

- ADD-H Comprehensive Teaching Rating Scale (ACTERS, Ullman, Sletator, & Sprague, 1984)
- Conners' Teacher Rating Scale (Conners, 1990)
- Child Behavior Checklist-Teacher Report Form (Edelbrock & Achenbach, 1984)
- School Situations Questionnaire (DuPaul, 1990)
- Attention Deficit Disorder Evaluation Scale-School Version ADDES, (McCartney, 1989)

(Note: It is important to note that the above compilation of ADHD assessment tools is not meant to be comprehensive but represents current, state-of-the-art approaches to the assessment

of this disorder. Annual review of assessment instruments and updating of this list should be conducted in order that assessment efforts and practices be kept current.)

In order to make the assessment of ADHD an objective process, the use of instruments that are norm-referenced and standardized is crucial. Norms are available for each of the rating scales listed above. Levels of significance have been established at between one and one-half standard deviations (92nd percentile) to two standard deviations (98th percentile) above the mean to qualify students as meeting criteria for ADHD. At Level II, it should be noted that activities consist primarily of data-gathering and information synthesis with statistical comparisons made on norm-referenced instruments.

Level III Screening

At this Level of assessment, the collection of more detailed information is necessary. Information at Level III is gathered through: (1) individual testing/assessment procedures; (2) additional behavioral observations; and (3) optional referral(s) to community resources including physicians and/or psychologists (see Figure 3).

Individual Assessment/Testing -- If the rating scale and observational data are evaluated and determined to be significant, the assessment process may progress to Level III, during which additional data collection may be necessary. Information may be needed, for example, regarding the age at which ADHD-related behaviors began, effects upon academic performance, and whether other conditions may be influencing behavior and/or co-existing with ADHD. Specific information to be gathered at this level may be as follows, dependent upon specific informational need:

- **Parent interview** -- In order to determine the age at which behaviors began and how behavior has been managed by parents, an interview should be conducted. Barkley (1990) has developed an interview questionnaire designed to gather pertinent background information regarding ADHD behaviors and their prevalence over time.
- **IQ Screening** -- If questions remain regarding intellectual capabilities (after records review) and the possibility of a pervasive developmental disorder, intelligence (IQ) testing may be conducted as part of overall assessment.
- **Individual Achievement Testing** -- When there is a question regarding the possible academic effect of ADHD upon achievement, individual achievement testing may be necessary. If standardized group testing scores are, however, in the average to above average range, such individual achievement assessment may not be necessary. If there is a suspicion of a co-existing learning disability or other related special education category of disability, full assessment through the multidisciplinary evaluation team as per 92 NAC 51 (Nebraska Special Education Rule 51) may be required.
- **Academic Performance Rating Scale (APRS)** -- Many students with ADHD score well within the normal range on tests of academic achievement and intelligence, however, their grades are often significantly lower than would be expected. This is frequently due to lack of assignment completion, poor performance and effort on class work, and/or missing homework. The Academic Performance Rating Scale (DuPaul, Rapport, and Perriello, 1990) is completed by teachers and gives a synopsis of percentages of assignments turned in, completion rates, and accuracy estimates. This scale provides needed information regarding academic productivity versus achievement and/or cognitive capability.
- **Teacher Interview** -- Since teachers have extensive information regarding both academic and social behavior in the classroom, an interview regarding teacher concerns may be necessary. DuPaul (1992) recommends that a review of ADHD behaviors be conducted along with teacher observations regarding social functioning and peer acceptance in the classroom. The Social Skills Rating System (Gresham, 1990) is an excellent measure for assessing social skills and can be used here. As children with ADHD frequently have significant problems with social rejection, teacher information is extremely valuable in assessing this

commonly found behavior.

- **Curriculum-Based Assessment** -- In addition to the Academic Performance Rating Scale, assessments using curriculum-based measures may provide additional, helpful information, particularly at younger ages during which standardized testing procedures may not reveal the presence of significant learning problems (using the standard discrepancy model). The use of such an assessment tool may provide information as to whether inattentive and hyperactive behaviors could be due to lack of capability to perform reading and math tasks in the classroom versus actually being caused by an attention deficit disorder. In addition, Curriculum-Based Assessment measures, as opposed to standardized assessment measures, can yield information directly relevant to intervention.

ADHD School Diagnostic Process Level THREE: Evaluation Procedures

**Student Assistance Team
or
Multidisciplinary Eval Team**

Additional Assessments As Needed	Observations	Optional Referrals
<ul style="list-style-type: none"> ● Ability screening ● Achievement test ● Academic performance rating scale ● Curriculum based measurement ● Parent Interview <ul style="list-style-type: none"> ✓ History ✓ Behavior management ● Teacher Interview <ul style="list-style-type: none"> ✓ Academics ✓ Behavior management ✓ Social behavior 	<p>Second observation (to minimize the issue of a "bad day"):</p> <ul style="list-style-type: none"> ● On-task behavior ● Fidgeting ● Out of seat ● Vocalizing ● Playing with objects (peer comparison for reliability) 	<ul style="list-style-type: none"> ● Pediatrician ● Clinical psychologist ● Psychiatrist ● Family physician ● ADHD specialty clinics

(Figure 3)

Additional Observations -- As students with ADHD may exhibit variability in performance across subjects, across tasks (i.e., individual seat work versus teacher-led activities) and over time, it is highly recommended that a minimum of one additional behavioral observation in the classroom setting be conducted. This observation should utilize the same methodology and examine the same variables as described above in Level II regarding such behaviors as on-task, fidgeting, out-of-seat, vocalizing, and playing with objects. Again, it is strongly recommended that a peer in the same classroom be observed to provide a basis of comparison for the target student's behavior.

Optional Referrals -- Who can (and/or should) diagnose students as being affected by ADHD has been a topic of debate. Current thinking (Guevremont, DuPaul, & Barkley, 1990) would suggest that physicians, clinical psychologists, or school psychologists who have training and experience in ADHD should be able to make a determination. If medication is involved in the overall treatment process, however, a physician's diagnosis will also be necessary. It should be noted that physicians (pediatricians, psychiatrists, and family practitioners) are not in a position to simply rubber stamp an evaluation from another professional without thorough review. School personnel should, therefore, be prepared to meet with and/or provide assessment information to a physician should parents decide that this course of action is necessary.

Finally, it should be noted that many physicians are becoming increasingly reluctant to prescribe psychostimulant medications (e.g., Ritalin, Cylert, or Dexadrine) as a first-line approach to treating ADHD. The Committee on Children with Disabilities, Committee on Drugs, of the American Academy of Pediatrics (1987) has gone so far as to indicate that stimulant medications should not be used in treatment until attempts to treat behaviors using classroom management, behavior modification, and parent training have been documented. This orientation places additional responsibility on schools to design intervention strategies that can be implemented and evaluated at the request of parents and/or the family's physician.

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- Ullmann, R. K., & Sleator, E. K., & Sprague, R. (1984). A new rating scale for diagnosis and monitoring of ADD children. *Psychopharmacology Bulletin*, 20, 160-164.

Annotated Assessment Information

CHILD BEHAVIOR CHECKLIST - TEACHER REPORT FORM (CBCL - TRF) (Edelbrock & Achenbach, 1984)

Developer:	Craig S. Edelbrock, Ph.D., and Thomas M. Achenbach, Ph.D.
Where to Obtain:	Thomas A. Achenbach, Ph.D., Department of Psychiatry, University of Vermont, Burlington, VT 05401
Copyrighted:	Yes
Items:	126
Ages:	6-16 years
Completion Time:	15-20 minutes
Scoring Software:	Yes
Normative Data:	Ages 6-16 years; n = 1,100
Factors Assessed:	(dependent on age and sex) Anxious, Social Withdrawal, Unpopular, Self-Destructive, Obsessive-Compulsive, Inattentive, Nervous-Overactive, and Aggressive; ratings of school performance are also provided
Comments:	"This checklist is quite similar in format and item content to the parent report form. In place of the Social Competence scale on the parent form, an Adaptive Functioning scale has been developed, reflecting the child's work habits, level of academic performance, degree of teacher familiarity with the child, and general happiness of the child. The Behavior Problems scale, like that for the parent, comprises a number of factor-analytically developed subscales spanning a broad range of child psychopathology. There are six different factorial profiles (three age groupings by; sex), respecting the changing nature of psychopathology across the developmental span of childhood and adolescence. This is a major advantage of this scale over other teaching rating scales, in addition to the excellent normative data available for addressing questions of statistical deviance" (Barkley, 1990, p. 296).

HOME SITUATIONS QUESTIONNAIRE - REVISED (HSQ-R) (DuPaul, 1990)

Developer:	George J. DuPaul, Ph.D. and Russell A. Barkley, Ph.D.
Where to Obtain:	George J. DuPaul, Ph.D., Department of Psychiatry, University of Massachusetts Medical Center, 55 Lake Avenue North, Worcester, MA 01655
Copyrighted:	No
Items:	14
Ages:	6-12 years
Completion Time:	< 5 minutes
Scoring Software:	No
Normative Data:	Ages 6-12 years; n = 581
Comments:	The HSQ-R is designed to assess specific problems with attention and concentration across a variety of home and public situations. The scale has normative data for a relatively equal number of boys and girls between the ages of 6 and 12 years. "Four scores can be obtained from the scale: the number of problem settings, the mean severity score, and the two factor scores noted above. The scale has been shown to have satisfactory test-retest reliability and to correlate significantly with other parent-completed rating scales of hyperactivity, such as the CPRS-R and the ADHD Rating Scale..." (Barkley, 1990, p. 294)

SCHOOL SITUATIONS QUESTIONNAIRE - REVISED (SSQ-R)

(DuPaul, 1990)

Developer: George J. DuPaul, Ph.D., and Russell A. Barkley, Ph.D.
Where to Obtain: George J. DuPaul, Ph.D., Department of Psychiatry, University of Massachusetts Medical Center, 55 Lake Avenue North, Worcester, MA 01655
Copyrighted: No
Items: 8
Ages: 6-12 years
Completion Time: < 5 minutes
Scoring Software: No
Normative Data: Ages 6-12 years; n = 490
Comments: The SSQ-R was designed to assess specific problems with attention and concentration across a variety of school situations. It was developed for establishing the pervasiveness of attention problems for diagnosing ADHD. Limited normative data for a relatively equal number of boys and girls between ages 6 and 12 years has been collected. "Two scores can be obtained from the scale: the number of problem settings, and the mean severity score. The scale has been shown to have satisfactory test-retest reliability and to correlate significantly with other parent-completed rating scales of hyperactivity, such as the CTRS-R and the ADHD Rating scale" (Barkley, 1990, p. 302).

**ATTENTION DEFICIT DISORDERS EVALUATION SCALE (ADDES)
(McCarney, 1989)**

Developer: Stephen B. McCarney, Ed.D.
Where to Obtain: Hawthorne Educational Services, PO Box 7570, Columbia, MO 65205
Copyrighted: Yes
Items: 46 (parent), 60 (teacher)
Ages: 4-18 years
Completion Time: 15 minutes
Scoring Software: Yes
Normative Data: Ages 4-18 years; n = 4,876
Factors Assessed: Inattention, Impulsivity, and Hyperactivity
Comments: "The ADDES is a recently developed and commercially marketed scale expressly for use with parents (and teachers) of ADHD children. It has the largest normative sample of any published rating scale for use with this disorder, and appears to have a larger item content with regard to the three symptoms of ADHD as well. Considerable attention was given to national representation of the normative sample, making this a finely developed instrument for assessing ADHD... An intervention manual comes with the kit and lists a variety of behavioral and educational strategies that can be used to improve the primary symptoms of ADHD. Educators are likely to find the scale quite useful because these recommendations are phrased in such a way as to fit neatly into formal individual education plans (IEPs) for ADHD children" (Barkley, 1990, p. 313).

**ACADEMIC PERFORMANCE RATING SCALE (APRS)
(DuPaul, Rapport, & Perriello, 1990)**

Developer: George J. DuPaul, Ph.D.
Where to Obtain: George J. DuPaul, Ph.D., Department of Psychiatry, University of Massachusetts Medical Center, 55 Lake Avenue North, Worcester, MA 01655
Copyrighted: No
Items: 19
Ages: Grades 1-6
Completion Time: < 5 minutes

Scoring Software: No
 Normative Data: Grades 1-6; n = 247
 Factors Assessed: Learning Ability, Academic Performance, Impulse Control, and Social Withdrawal
 Comments: "The APRS was developed in 1989 to complement other teacher rating scales, which are inadequate for evaluating a child's academic productivity and accuracy in the classroom. The scale is brief and convenient, and has adequate psychometric properties for use with children in grades 1 through 6... It can be scored to yield four scores derived from factor analysis of the scale items: Learning Ability, Academic Performance, Impulse Control, and Social Withdrawal. The scale has quite satisfactory test-retest reliability and internal consistency, and its scores correlate significantly with those on other teacher ratings of behavior. It also correlates with test scores from standardized academic achievement tests given annually to children, as well as with actual calculations of academic productivity and accuracy taken in the children's classrooms. The value of the scale seems to be in the assessment of the first two scores, which are not available on any other teacher rating scales" (Barkley, 1990, p. 306).

**ADD-H COMPREHENSIVE TEACHER RATING SCALER (ACTeRS)
 (Ullmann, Sleator, & Sprague, 1984)**

Developer: Rina K. Ullmann, Ph.D., Esther Sleator, M.D., and Robert L. Sprague, Ph.D.
 Where to Obtain: Rina K. Ullmann, Ph.D., Institute for Child Behavior and Development, 51 Gerty Drive, Champaign, IL 61820
 Copyrighted: Yes
 Items: 24
 Ages: 5-12 years
 Completion Time: 5-10 minutes
 Scoring Software: No
 Normative Data: Ages 5-12 years; n = 1,347
 Factors Assessed: Oppositional Behavior, Attention, Hyperactivity, and Social Problems
 Comments: "This scale was developed for the assessment of children with DSM-III Attention Deficit Disorder (ADD) and for monitoring their response to treatment. The four subscales assessed by the ACTeRS were developed through factor analysis, with the Oppositional Behavior factor accounting for more than 76% of the variance. This factor is quite similar to the Conduct Problem factor on the CTRS and the Aggressive factor on the Teacher Report Form of the Child Behavior Checklist (CBCL-TRF). Normative data for a large sample aged 5 to 12 years are provided in a profile format for easy interpretation of factor scale elevations. However, norms are not reported by age or sex... In general, the chief utility of this scale is in the diagnosis of children with ADD, especially in distinguishing those ADD children with and without hyperactivity" (Barkley, 1990, p. 667) management.

**CONNERS PARENT RATING SCALE - REVISED (CPRS-R)
 (Goyette, Conners & Ulrich, 1978)**

Developer: C. Keith Conners, Ph.D.
 Where to Obtain: C. Keith Conners, Ph.D., Department of Psychiatry, Duke University Medical Center, Durham, NC 27710
 Copyrighted: Yes
 Items: 48
 Ages: 3-17 years
 Completion Time: 5-10 minutes
 Scoring Software: Yes
 Normative Data: Ages 3-17 years; n = 570
 Factors Assessed: Conduct Problems, Learning Problems, Psychosomatic, Impulsive-Hyperactive, and Anxiety
 Comments: "There are three versions of the Conners Parent Rating Scale currently in use: (1) the original 93-item

scale (Conners, 1970); (2) the 48-item revised version (CPRS-R; Goyette et. al., 1978); and (3) the 10-item Abbreviated Symptom Questionnaire. The CPRS-R is most useful when a brief evaluation of conduct problems or hyperactivity is of interest (Barkley, 1990). Barkley (1990) contends that the CPRS-R is not as useful for the initial assessment and diagnosis of ADHD as the CBCL due to its limited length and item coverage and smaller normative sample. It is more appropriate for evaluating treatment effects of a stimulant medication trial or to measure the effects of parent training in child behavior management.

CONNERS TEACHER RATING SCALE - REVISED (CTRS-R)
(Goyette et. al., 1978)

Developer: C. Keith Conners, Ph.D.
Where to Obtain: C. Keith Conners, Ph.D., Department of Psychiatry, Duke University Medical Center, Durham, NC 27710
Copyrighted: Yes
Items: 28
Ages: 3-17 years
Completion Time: 5-10 minutes
Scoring Software: Yes
Normative Data: Ages 3-17 years; n = 383
Factors Assessed: Conduct Problems, Hyperactive, Inattentive-Passive
Comments: "The CTRS-R appears most useful as a quick screening measure for conduct problems and hyperactivity, but not especially useful for evaluating internalizing, neurotic, depressive, and anxious symptoms" (Barkley, 1990, pp. 298-299). The CBCL-TRF is preferable for the purpose of diagnosing ADHD.

ADHD RATING SCALE
(DuPaul, 1990)

Developer: George J. DuPaul, Ph.D.
Where to Obtain: George J. DuPaul, Ph.D., Department of Psychiatry, University of Massachusetts Medical Center, 55 Lake Avenue North, Worcester, MA 01655
Copyrighted: No
Items: 14
Ages: 6-12 years
Completion Time: < 5 minutes
Scoring Software: No
Normative Data: Ages 6-12 years; n = 765 for parents, n = 551 for teachers
Factors Assessed: Inattention-Restlessness and Impulsivity-Hyperactivity
Comments: The ADHD Rating Scale was developed by DuPaul (1990) to assess the 14 symptoms of ADHD from the diagnostic criteria in the DSM-III-R (American Psychiatric Association, 1987). It provides a direct rating of the essential symptoms of the disorder from both parents' and teachers' perspective and normative data for each gender that are available for parent and teacher reports. Three scores are calculated for the scale: Total Score, Inattention-Restlessness, and Impulsivity-Hyperactivity" (Barkley, 1990, p. 310).

CHILD BEHAVIOR CHECKLIST (CBCL)
(Achenbach & Edelbrock, 1983)

Developer: Thomas M. Achenbach, Ph.D., and Craig S. Edelbrock, Ph.D.
Where to Obtain: Thomas M. Achenbach, Ph.D., Department of Psychiatry, University of Vermont, Burlington, VT 05401

Copyrighted: Yes
Items: 138
Ages: 4-16 years
Completion Time: 15-20 minutes
Scoring Software: Yes
Normative Data: 2-16 years; n = 1,300
Factors Assessed: (dependent on age) Social Withdrawal, Depressed, Immature, Somatic Complaints, Sex Problems, Anxious-Schizoid, Aggressive, Delinquent, Hyperactive, Uncommunicative, Obsessive-Compulsive
Comments: "There can be little doubt that this is the most well-developed, empirically derived behavior rating scale currently available for assessing psychopathology and social competence in children. The item content is sufficiently broad to capture the majority of internalizing or externalizing disorders, to assess social competence, and to evaluate a diversity of psychopathological disturbances likely to present in clinical practice. The availability of an equally well-developed Teacher Report Form for the CBCL (see below), as well as a Youth Self-Report Form, further recommends the use of these scales as standard components of a thorough evaluation of ADHD children" (Barkley, 1990, pp. 286-287).

Medication Administration As A Related Service

Gregg Wright, M.D.

If medication has been prescribed for a child by a licensed physician in order to modify the symptoms of ADHD and is needed to assist the child in benefiting from his/her educational program, then administration of this medication is considered a related service under Section 504.¹ In this case, the school has an obligation to insure that the child receives the medication as prescribed. In the case cited, the school district claimed that the child missed his medication because he failed to come to the office to pick up his daily dose. OCR found that this was not a sufficient reason not to provide this related service to the child.

Schools should have medication policies in place for all children who need medication. These policies should follow accepted national guidelines in developing these policies. These guidelines include: (1) a legal prescriber must authorize the medication; (2) parents must give permission for the medication to be administered; (3) the medication should be labeled properly; (4) the medication should be stored in a secure, locked compartment; and (5) the school should keep records that document administration of the medication.²

Because the school personnel are often in the best position to monitor the effects of medication that is given for ADHD, it is important for the school to establish and maintain communication with the prescribing physician. In consultation with the physician, a symptom checklist should be developed for the individual child to reflect symptoms that are expected to improve with medication and side effects that may be anticipated. This checklist can then be completed by the school on a regular basis and provided to the physician. For example, the short form of the Conners Teacher Behavioral Rating Scale contains 10 items that may provide a convenient form for many children. This communication will require a release of information form to be signed by the parents to allow communication in both directions between the school and physician.

¹ OCR Ruling: San Ramon (CA) Unified School District, in Individuals with Disabilities Education Law Report 18 IDELR 465 Volume 18, Issue 9.

² Cited in Principles and Practices of Student Health, Ed. by Wallace et. al., Third Party Publishing Company, Oakland, California 1992.

Accommodating The Child With Attention Deficit Disorder

Marlene Snyder

Attention Deficit Disorder is a neurobiological disability (OCR, 1994; Riccio, 1993) frequently characterized by developmentally inappropriate degrees of inattention or over activity and impulsivity. These characteristics often arise in early childhood, are relatively chronic in nature, and are not readily accounted for on the basis of gross neurological, sensory, language or motor impairment, mental retardation or severe emotional disturbances. The defining features are typically associated with deficits in rule-governed behavior and in maintaining a consistent pattern of work performance over time (Barkley, 1990).

There are two forms of attention deficit disorder; attention deficit hyperactivity disorder -- ADHD (where the child always seems to be moving and overactive) and undifferentiated attention deficit disorder -- UADD (where the child seems to be daydreaming and may be slow moving). Both groups share a common bond. Left untreated or unrecognized, or if the disorder is not completely understood as the disability that it is, these children run a high risk of educational failure.

Research estimates that 3 to 5 percent of elementary school children meet the diagnostic criteria for ADD (Campbell & Werry, 1986). Assuming those estimates are correct, educators in Nebraska, should be aware that 6,988 to 11,647 elementary school children may meet the ADD criteria. (Figures based on a total of 232,948 children as reported by the September, 1992 Census, NE Department of Education, Data Center - Pre-Kindergarten through eighth grade statistics which includes, public, non-public, state operated, and ESU school programs.)

ADD is a "hidden disability" in that there are no obvious physical signs. Because the child "looks normal," adults expect him/her to behave normally; however, ADD children behave in the way that comes naturally to them. Inappropriate handling of characteristic behaviors of a child with ADD can escalate behavior problems and be the precursor of serious educational problems and lifelong failures. ADD it is not usually outgrown; ADD is a lifetime disability 30-70% of the time (Wender, 1987).

Most children with ADD have serious difficulties in school because of high demands on attention, self-control and compliance (Barkley, 1990). Teaching a child with ADD challenges even the best teachers. The child often daydreams, does not seem to listen and has trouble following directions. He/she has difficulty starting a task and completing it. Some have perceptual-motor difficulties that interfere with written assignments. Some children with ADD are disruptive in class, which hinders everyone's academic progress. Whereas most children learn the rules of appropriate behavior relatively easily, children with ADD need to be taught repeatedly how to listen, when and how to be on task, how to organize and complete assignments, and how to control their impulsivity and emotions. Some teachers are successful with these students, but others find the child with ADD extremely difficult to manage and teach.

Children with ADD can be as frustrating for teachers to deal with in the classroom as they are for parents to deal with at home. Regular behavior modification techniques often do not work for teachers or parents (Barkley, 1990). It is common for teachers to blame parents and parents to blame teachers for the inability to reach these children. To intervene effectively with ADD children, teachers need to be knowledgeable about the disorder and how to work with the children and their parents. Many times parents are unaware their child has ADD, or are unaware of its seriousness in the educational environment. In their shared frustration, schools and parents can become so caught up in blaming each other that they loose site of what is in the best interest of the child.

Academic underachievement and behavior problems are the primary complaints of administrators, teachers and parents of children with ADD. Unfortunately, it is estimated that slightly less than half of the children struggling with this disability are diagnosed, and most of those who are diagnosed are not receiving effective multimodal treatment (Weiss, Hechtman, 1993). Congenial, collaborative effort of knowledgeable parents and professionals such as special education teachers, regular classroom teachers, school administrators, physicians and school psychologists is critical if the child with ADD is to be helped with their educational difficulties.

Studies about educational outcomes of children with ADD have produced sobering statistics. An eight-year longitudinal study by Barkley et al. (1990) showed that:

- 30 percent were retained in a grade at least once, with many retained more than once.
- 46 percent were suspended, often more than once.
- 11 percent were expelled.
- 10 percent dropped out of school.

Weiss and Hechtman (1986) did longer term follow-up studies of children with ADD into adulthood. They found:

- Over 50 percent were retained in a grade at least once.
- 35 percent never completed a high school education.
- Only 5 percent completed college.

Grade point averages of adolescents with hyperactivity are significantly lower than their non-hyperactive peers (Howell & Huessy, 1981). Up to 26 percent of elementary students with ADD repeat one or more grades (Howell & Husessy, 1981; Mannuzza, Klein, Bonagura, Konig & Shenker, 1988). Few students with ADD attempt any education beyond high school (Howell & Huessy, 1981). Lambert (1987) reported that of those students exhibiting hyperactivity who did not complete high school, 69 percent had been assigned to special schools.

Thirty years of documentation have both verified the incidence of hyperactivity and identified the significant educational impairment throughout the life span of individuals afflicted with this disorder. Yet to date, few school districts have implemented program alternatives specifically designed for students with ADD (Barkley, 1990). Campbell and Cohen (1990) surveyed the directors of special education in the United States to determine whether educational services are available to ADD children. Results indicated the ADD diagnosis qualified a child for services in only one out of 51 departments of special education surveyed. The authors concluded that in most areas of the United States, special educational services for students with ADD were not available (page 191).

Intense lobbying efforts by parent groups seeking federal support for their child's educational programming failed to influence federal legislators during the reauthorization of Public Law 94-142, the Education for All Handicapped Children Act of 1975, now known as Individuals with Disabilities Act (IDEA). Attention Deficit Hyperactivity Disorder was not recognized as a handicapping condition for inclusion under the mandates of PL 94-142 for two reasons. Children diagnosed with ADD already are eligible for special education services within the guidelines of PL 94-142 under the category of "other health impaired."

Provisions for educational services are also made for children with ADD under section 504 of the Rehabilitation Act of 1973. Because of the tireless efforts of the parent groups, ADD eligibility for services within general and/or special education was clarified in a memorandum to chief state school officers by the United States Department of Education (Davila, Williams and MacDonald, 1991). ADD is recognized as a condition which results in significant learning problems for some children. Responsibility of state and local education agencies to address the educational needs of children with ADD was clearly delineated by the memorandum.

Parents and school districts in Nebraska are now beginning to understand the implications of this clarification and regular classroom teachers are being asked to make "reasonable accommodations" for students with ADD. Many of these classroom teachers have not been trained for their dual role in referring students for assessment in implementing appropriate classroom accommodations to meet the needs of students with ADD.

Marsh, Gearheart & Gearheart (1978), clearly distinguished between attempts to remediate students and attempts to accommodate them. According to the authors, remedial teaching focuses on "changing the learner...so that he or she may more effectively relate to the educational program as it is provided and administered and administered for all students." Accommodation, on the other hand, focuses on "changing the learning environment or the academic requirements so that the student may learn in spite of a fundamental weakness or deficiency." (p. 85).

Typically, students with ADD with average or above-average intelligence fail to qualify for special education services which might address some of their problems. In general, they are taught by the regular classroom teacher, who may not be trained to recognize and deal with children with attention deficit disorders. Without accommodations, ADD may compromise a child's learning and seriously threaten their academic success. No known medical cure exists for ADD; we cannot change the child. Problems arising

from the disability are treatable; we can change the educational environment, teaching techniques, or academic requirements to accommodate his/her weaknesses. With early and proper identification, assessment, diagnosis, understanding and reasonable accommodations, children with ADD can become successful individuals.

Because teachers play a critical part in both initial referral and in subsequent classroom intervention, it is vital that training on ADD be available for all teachers.

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Accommodating the Child with Attention Deficit Disorder

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The Teacher's Challenge

Excerpt from *The CH.A.D.D. Educators Manual*. (Used with permission - June 18, 1993)

Children with ADD are *Learn By Doing, Trial and Error Learners*. They will learn to work for the following:

1. to get something (stimulating, active, novel)
2. to get out of or away from something (repetitious, boring)

Teachers of children with ADD face the challenge of how to incorporate more activity and novelty into their methods and materials. The following principles for remediation, based on Dr. Zentall's work, are recommendations which she submitted to the Council for Exceptional Children Task Force on ADD. They appear to apply to children of all ages.

Principles of Remediation for Excessive Activity

- Do not attempt to reduce activity, but channel it into acceptable avenues.
Encourage directed movement in classrooms that is not disruptive.

Allow standing during seat work, especially during end of task.
- Use activity as a reward.
Give activity reward (errand, clean board, organize teacher's desk, arrange chairs) as individual reward for improvement.
- Use active responses in instruction.
Use teaching activities that encourage active responding (talking, moving, organizing, working at the board).

Encourage diary writing, painting, etc.

Teach child to ask questions that are on-topic.

Principles of Remediation for Inability to Wait (impulsivity)

- Give the child substitute verbal or motor responses to make while waiting and where possible do encourage day-dreaming or planning in the interim.
Instruct the child on how to continue on easier parts of tasks (or do a substitute task) while waiting for teacher's help.

Have the child underline or rewrite directions before beginning or give magic markers or colored pencils for child to underline directions or relevant information.

Encourage doodling or play with clay, paper-clips, pipe cleaners while waiting or listening to instructions.

Encourage note taking (even just cue words).

Note: Dr. Barkley also suggests the teacher actively focus on and reward short intervals of waiting and gradually increase the length of the period.

- Where inability to wait becomes impatience and bossiness, encourage leadership but do not assume that impulsive statements or behavior are aggressive in intent.
Suggest/reinforce alternate ways (e.g. line reader, paper passer).

For children who interrupt, teach them to recognize pauses in conversations and how to hang onto ideas.

Cue child about upcoming difficult times or tasks where extra control will be needed.

Instruct and reinforce social routines (hellos, goodbyes, please, thank you).

Principles of Remediation for Failure to Sustain Attention to Routine Tasks and Activities

- Decrease the length of the task.
 - Break one task into smaller parts to be completed at different times.
 - Give two tasks with a preferred task to be completed after the less preferred task.
 - Give fewer spelling words, math problems.
 - Use fewer words in explaining tasks (concise and global verbal directions).
 - Use distributed practice for rote tasks, rather than mass practice.
- Make tasks interesting.
 - Allow work with partners, in small groups, in centers.
 - Alternate high and low interest tasks.
 - Use overhead projector when lecturing.
 - Allow child to sit closer to the teacher.
- Increase novelty especially into later time periods of longer tasks.
 - Make a game out of checking work.
 - Use games to over-learn rote material.
- Do not teach or reinforce "dead-man's behavior" -- that is, do not assume the child is not paying attention just because s/he looks out the window or at another child. Do not make on-task behavior a goal, without changing the nature of the task or learning environment.

Principles of Remediation for Noncompliance and Failure to Complete Tasks

- Generally increase the choice and specific interest of tasks for the child.
 - Allow a limited choice of tasks, topics, activities.
 - Determine child's preferred activities and use as incentives.
 - Bring child's interests into assignments.
- Make sure tasks fit within child's learning abilities and preferred response style.
 - Allow alternate response modes (typewriter, computer, taped assignments).
 - Alter assignment difficulty level (give advanced level assignments or lower the level of difficulty).
 - Make sure disorganization is not reason for failure to complete tasks.

Principles of Remediation for Difficulty at the Beginning of Tasks

- Generally increase the structure and salience of the relevant parts of tasks and social settings.
 - Prompt child for verbal directions (i.e., use written directions in addition to verbal ones; encourage note taking).
 - Structure written assignments and tests (i.e., use graph paper for math; state standards of acceptable work being as specific as possible).
 - Point out overall structure of tasks (topic sentences, headings, tables of content).

Allow work with partners or in small groups with quiet talking.

Color, circle, underline, or rewrite: directions, difficult letters in spelling, math process signs.

Principles of Remediation for Completing Assignments on Time

- Increase the use of lists and assignment organizers (notebooks, folders).
Write assignments for child in a pocket notebook.

Write assignments on the board. Make sure the child has copied them.
- Establish object-placement routines to retrieve routinely used objects such as books, assignments, and clothes.
Encourage routines of pocket folders with new work on one side and completed, graded work and class notes organized chronologically on the other.

Encourage parents to establish places for certain things at home (books, homework).

Organize desk or locker with labels and places for certain items.
- Use color and physical/spatial organizers.
Before leaving one place for another (walking out of a door) teach routine of child self-questioning -- "Do I have everything I need?"

Tape prompt cards in desks, on books, or on assignment folders.

Increasing Planning and Sequential Organization of Thought

- Practice planning.
Practice planning different activities (what is needed, how to break tasks into parts).

Practice estimating time needed for activities.

Teach outlining skills.
- Practice sorting, ordering, and reordering.
Teach the use of a word processor to reorder ideas.

Teach the child to take notes on lectures or on written materials in three columns (main points, supporting points, questions).

Principles of Remediation for Poor Handwriting

- Reduce need for handwriting.
Do not have child recopy material. It will get progressively worse instead of better.

Allow student to copy a peer's notes or the teacher's notes.

Accept typed or taped assignments.
- Reduce standards on some assignments and make relevant standards clearer on important assignments.
Color, circle or underline parts of letters that children typically fail to close in cursive writing.

Allow reduced standards for accept- 14 able handwriting.

Display particularly good samples of the child's work.

Principles of Remediation for Low Self-Esteem

- Generally recognize child's strengths and efforts.
Call attention to areas of child's strengths by allowing for a consistent time each day or week during which child can display his/her talents.

Recognize that excessive activity can also mean increased energy and productivity.

Recognize that bossiness can also be leadership potential.

Recognize that attraction to novel stimulation can also lead to creativity.
- Increase child's feelings of success by increasing child's skills.
Recognize these children's playfulness and use it to develop skills.

Mark student's correct performance, not the mistakes.

SUGGESTED READING AND AUDIOPROGRAMS* Attention Deficit Disorders/With or Without Hyperactivity

Suggested Reading For Parents and Teachers

- Allen, Juliett V. *What Do I Do When*. Impact Publishers, 1983.
- Bain, Lisa J. *A Parent's Guide to Attention Disorders*. Children's Hospital of Philadelphia, Delta Books, 1991.
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Books and Videos for Children

Gehret, Jeanne. *Eagle Eyes*, Verbal Images Press, 1991.

Goldstein, Sam & Goldstein, Michael. *It's Just Attention Disorder: A Video Guide for Kids*. Neurology, Learning and Behavior Center, 1991.

Gordon, Michael, Ph.D. *My Brother's A World Class Pain*.

Gordon, Michael. *Jumpin' Johnny Get Back To Work!* GSI Publications, 1991.

Levine, Melvin D., M.D. *Keeping A Head In Class*. Educators Publishing Service, Inc., 1990. (For Older Children)

Levine, Melvin D., M.D. *All Kinds of Minds*. Educators Publishing Service, Inc., 1990. (For Younger Children)

Moss, Deborah. *Shelly The Hyperactive Turtle*. Woodbine Press, 1989.

Gnat, Kathleen & Dixon, Ellen. *Learning to Slow Down and Pay Attention*. Chesapeake Psychological Services, 1991.

Parker, Roberta & Parker, Harvey. *Making the Grade: An Adolescents Struggle with ADD*. Impact Publications, 1992.

Quinn, Patricia & Stern, Judith. *Putting on the Brakes*. Magination Press, 1991.

* These publications are available from the A.D.D. WareHouse and/or from the Learning Disabilities Association of America. For product catalogs or information write or call:

A.D.D. WareHouse
300 Northwest 70th Ave, Suite 102
Plantation, FL 33317
(305)792-8944
(800)233-9273

Learning Disabilities Association of America
4156 Library Road
Pittsburgh, PA 15234
(412)341-1515

Support Groups

CH.A.D.D. (Children and Adults with Attention Deficit Disorders)
"Parents Supporting Parents"
Suite 308
499 N.W. 70th Avenue
Plantation, Florida 33317
Phone (305)587-3700

CH.A.D.D. State Council of Nebraska
PO Box 35
Beatrice, NE 68310
Phone or fax (402)228-7249

Learning Disabilities Association of Nebraska
PO Box 6464
Omaha, NE 68106
Phone (402)571-7771

Attention Deficit Disorder Association (ADDA)
8091 South Ireland Way
Aurora CO 80016
Phone (800)487-2282



Americans with Disabilities Act



Americans With Disabilities Act

Introduction

The Americans with Disabilities Act (ADA) is a civil rights law that prohibits discrimination against persons with disabilities in areas of employment, public services, public accommodations, transportation, and communication.

The ADA has the following purposes:

- To provide a clear and comprehensive national mandate to end discrimination against persons with disabilities.
- To provide enforceable standards addressing discrimination against persons with disabilities.
- To ensure that the federal government plays a central role in enforcing these standards.

The ADA is similar to the Civil Rights Act of 1964, which prohibited discrimination based upon race, color, sex, religion, and national origin in employment, public accommodations and the provision of state and local services. It extends those same protections to disabled individuals. The first federal legislation to recognize the disabled as a protected class was the Rehabilitation Act of 1973. Section 504 defines key terms and definitions which were incorporated into the ADA. Section 504 mandates that any recipient - direct or indirect - of federal funds must make their programs and activities accessible to the disabled.

AMERICANS WITH DISABILITIES ACT REQUIREMENTS:

Employment

- Employers may not discriminate against an individual with a disability in hiring or promotion if the person is otherwise qualified for the job.
- Employers can ask about one's ability to perform a job, but cannot inquire if someone has a disability or subject a person to tests that tend to screen out people with disabilities.
- Employers will need to provide "reasonable accommodations" to individuals with disabilities. This includes steps such as job restructuring and modification of equipment.
- Employers do not need to provide accommodations that impose an "undue hardship" on business operations.
- Who needs to comply:
 - ✓ All employers with 25 or more employees must comply, effective July 26, 1992.
 - ✓ All employers with 15-24 employees must comply, effective July 26, 1994.

AMERICANS WITH DISABILITIES ACT REQUIREMENTS:

Transportation

- New public transit buses ordered after August 26,1990, must be accessible to individuals with disabilities.
- Transit authorities must provide comparable or other special transportation services to individuals with disabilities who cannot use fixed route bus services, unless an undue burden would result.
- Existing rail systems must have one accessible car per train by July 26, 1995.
- New rail cars ordered after August 26,1990, must be accessible.
- New bus and train stations must be accessible.
- Key stations in rapid, light, and commuter rail systems must be made accessible by July 26,1993, with extensions up to 20 years for commuter rail (30 years for rapid and light rail).
- All existing Amtrak stations must be accessible by July 26, 2010.

AMERICANS WITH DISABILITIES ACT:

Public Accommodations

- Private entities such as restaurants hotels, and retail stores may not discriminated against individuals with disabilities, effective January 26, 1992.
- Auxiliary aids and services must be provided to individuals with vision or hearing impairments or other individuals with disabilities, unless an undue burden would result.
- Physical barriers in existing facilities must be removed, if removal is readily achievable. If not, alternative methods of providing the services must be offered, if they are readily achievable.
- All new construction and alterations of facilities must be accessible.

AMERICANS WITH DISABILITIES ACT REQUIREMENTS:

State and Local Governments

- State and local governments may not discriminate against qualified individuals with disabilities.
- All government facilities, services, and communications must be accessible consistent with the requirements of Section 504 of the Rehabilitation Act of 1973.

AMERICANS WITH DISABILITIES ACT REQUIREMENTS:

Telecommunications

- Companies offering telephone service to the general public must offer telephone relay services to individuals who use telecommunications devices for the deaf (TDD's or similar devices).

AMERICANS WITH DISABILITIES ACT REQUIREMENTS:

Administrative Requirements

- All schools should conduct a self-evaluation of services, practices, and policies to assure that persons with disabilities are not discriminated against. If necessary, modifications should be made to guarantee equal access by everyone. Students, applicants, employees, and other interested persons must be notified in an accessible format of such provisions under ADA.
 - Any school district who employs 50 or more, shall designate a coordinator to manage ADA efforts.
 - Any school district who employs 50 or more shall adopt and publish grievance procedures for resolution of ADA complaints.
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References for ADA information:

Making the ADA Work for You, Miltwright & Assoc., Inc.

Application/Interview Process, Sidney F. Lewis, of Kullman, Illman, Bee, Downing and Banta.

Interviewing Do's and Don'ts for Employers

Prior to the Interview:

- Prepare a job description detailing essential functions of the job.
- Prepare to ask questions about ability to perform job-related functions.
- Remember to NOT assume or speculate.

An employer MAY ask:

- About information on the application
- Prior job duties
- If the applicant can perform each essential job function (example: Are you capable of standing 3 hours?). If the applicant indicated that he/she can perform a function of the job with an accommodation, the employer may ask the applicant how and with what accommodation.
- For medical exam AFTER conditional offer of employment if the exam is the STANDARD policy. (Drug testing is not considered a medical exam and can be requested prior to conditional offer of employment if this has been a STANDARD policy.)

An employer may NOT ask about:

- Conditions or diseases
- Hospitalizations
- Treatment by psychiatrist or psychologist
- Mental conditions
- Health-related reasons why not able to perform job
- Major illness
- Days absent due to illness
- Physical defects
- Prescriptions
- Worker's compensation
- Past treatment for substance abuse