

Accommodating attention deficit disorders

Parents of affected students emboldened by recent rulings

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Boyed by recent court rulings in favor of plaintiffs in the marathon special education lawsuit against the Education Department, parents of children with Attention Deficit/Hyperactivity Disorder are stepping up their own demands that public and private schools comply with federal laws protecting students with the condition.

According to Section 504 of the Americans with Disabilities Act, all schools public and private that receive federal funds are required to evaluate and accommodate children with AD/HD whose condition meets the law's special needs criteria. The non-profit organization CHADD — which stands for Children and Adults with Attention Deficit Disorders — is demanding compliance with the federal law.

This week, CHADD will take its case to commonwealth Education Secretary Rafael Aragunde and Family Secretary Yolanda Zayas and has contracted the services of American Civil Liberties Union lawyer William Ramirez with the goal of enforcing compliance with the federal law in Puerto Rico.

Their efforts involve more than just an awareness campaign: many of the parents of children with AD/HD have already joined the ongoing class action lawsuit against the Education Department originally filed more than 25 years ago by Rosa Lydia Velez, who sued the agency for failing to provide basic services for her daughter, then a student with special needs in the public school system.

Other parents are contemplating separate legal action. "I was at the Education Department the other day and I watched an employee tell a mother, who was in the company of a 14-year-old child, 'Let me see what I can do for you,'" said one parent of an AD/HD child during a recent CHADD meeting.

"The parents don't even know it, but right at that point, their rights are being violated. It's not what the Education can do for you, it is about complying with the law."

If a child with AD/HD meets the Section 504 criteria for disability, the school is obligated to accommodate the child's needs, said CHADD President Marangely Gonzalez.

Disorder affects up to 7.5% of students

According to research by Dr. José Bauermeister, a clinical psychologist and professor at the University of Puerto Rico's Behavioral Sciences Research Institute, 7.5 percent of Puerto Rican ages 4-17 suffer from AD/HD, with 3.7 percent affected seriously, making it the most prevalent disorder among Puerto Rican schoolchildren. In the United States, an estimated 4 million children have AD/HD.

"You can't even imagine the number of parents who come to me to tell me that their child was kicked out of private school because the child had symptoms of AD/HD," said Gonzalez. "The parents don't know their rights."

Parents whose children are rejected by private schools have two options, each with its own drawbacks, Gonzalez said. One, they can register to receive special education within the public school system, which Gonzalez said means the children can languish in the system for months and even years before receiving services. Their second option is to send their children to private special education schools, some of which can cost as much as \$2,100 per month.

Gonzalez said many parents fear the public school system, not only because it takes months just to process paperwork, but also because the Education Department lacks the proper facilities to deal with AD/HD kids, grouping all special education students together.

Earlier this year, Gov. Acevedo Vila vetoed a bill, which was approved unanimously in the Legislature, that would have required public school teachers to earn at least 12 continuing

Attention Deficit/Hyperactivity Disorder is the most prevalent disorder among Puerto Rican students, affecting 7.5 percent of schoolchildren ranging in age from 4 to 17, according to Dr. José Bauermeister, a clinical psychologist and professor at the University of Puerto Rico's Behavioral Sciences Research Institute.

education credits in classes related to teaching students with AD/HD, dyslexia, autism and other problems.

The bill's author, Puerto Rican Independence Party Rep. Victor García San Inocencio, blasted the veto of his measure requiring "teachers be taught about health conditions that affect a student's learning."

"In many cases, these children are characterized as incorrigible, undisciplined or lost causes and [subject to] disciplinary measures, including expulsion, because they think the behavior is due to a lack of discipline and not the symptom of a health problem," San Inocencio said.

Facing a serious budget crunch, the Education Department has still not met the terms of rulings in the special education class action. In the first landmark ruling in that case in 1980, Education was ordered to pay \$5,000 to each parent of a special education child and meet the special needs of the students. A Superior Court ruling overturned part of that ruling, stripping the case of its class-action status. Last year, a local appellate court restored the class-action tag and ordered Education to pay an undetermined amount to parents of some 70,000 special education students.

The total tab from the ruling, which Education has decided not to appeal, are expected to reach at least into the hundreds of millions of dollars.

In addition, Superior Court Judge Oscar Dávila Suárez handed down an order in January for Education to pay \$2,000 in fines every day until it meets the needs for special education students as required by the 1980 ruling.

Parents: Private schools also a problem

While the Education Department struggles this year with special education reform in public schools, Puerto Rico's private schools continue to steamroll over educational rights of children with AD/HD, Gonzalez said.

According to Gonzalez, Section 504 obligates private schools receiving federal funds to accommodate the needs of the AD/HD child. She claimed that Puerto Rico's private schools that get federal funds skirt the law "by making the child's life impossible."

"Most of the parents just end up leaving in tears," said one parent who said her son's experience in an exclusive private

parochial school bordered on "emotional abuse."

"I have such a hard time understanding why we as parents pay such a huge amount of money for private school education and then we are afraid to exercise our own rights," said another parent.

Section 504 received its most serious challenge in Puerto Rico in the case of Berzovitch v. Baldwin School, when an appeals court in 1997 reversed a decision by then U.S. District Judge Salvador Casellas requiring the private, non-special needs school to keep an AD/HD student it had suspended.

"This case also raises questions . . . about the extent to which a private independent school must accommodate a student with ADHD whose behavior repeatedly violates school codes of discipline and proper behavior," reads the First Circuit Court of Appeals' case brief.

Commenting on the outcome of the case last year, Casellas told The STAR he felt "disillusioned" but confident the discussion of the case raised awareness of the issue.

"The importance of the case is it discusses the nature of this attention deficit disorder and how prevalent it is, and that the educational system has to adapt and to recognize it and evolve so that these children can be accommodated so that they can fulfill their educational potential," Casellas told The STAR last year.

"From then on, I have noticed in the press both in the states and here that there is an increasing awareness of the liability that these children have."

Ramirez, who has come to the aid of CHADD this month, represented the parents of an AD/HD child in the Baldwin case.

The U.S. Department of Education's "Section 504 memo" reads as follows: "Under Section 504, if parents believe their child has a disability, whether by ADD or any other impairment, and the local educational agency [LEA] has reason to believe the child needs special education or related services, the LEA must evaluate the child to determine whether he or she is disabled as defined by Section 504. If the LEA does not believe that the child needs special education or related services, and thus refuses to evaluate the child, the LEA must notify the parents of their due process rights."