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## ABSTRACT

Children with attention deficit hyperactivity disorder (ADHD) are provided for under three federal statutes: the Individuals with Disabilities Education Act (IDEA), Part B; Section 504 of the Rehabilitation Act of 1973; and the Americans with Disabilities Act of 1990. State education agencies have ultimate responsibility for providing a free appropriate education for students with this disability by providing services directly, by contracting for services, or by delegating responsibility to local education agencies. To meet legal requirements, schools must identify and provide services for eligible children, educate children with ADHD along with nondisabled children to the extent possible, eliminate practices and policies that allow disabled children to be suspended or expelled for more than 10 days for behavior associated with their disability, and follow procedural safeguards outlined in IDEA. Because state education agencies are responsible for school oversight, a state's education policymakers have a clear mandate to formulate policy and develop a state plan for educating disabled students. To prevent school failure for children with ADHD and unnecessary lawsuits, they must be sure the policy and plan are known and implemented in the state's schools. Questions that policymakers need to ask about providing services to students with ADHD are listed. Efforts in Kentucky, Tennessee, Virginia, and West Virginia to train regular education teachers to educate children with ADHD are described. (Contains 15 references.) (JDD)

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# Policy Briefs

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## ADHD— NEW LEGAL RESPONSIBILITIES FOR SCHOOLS

The class clown, the space cadet, the rude or disrespectful teenager, the "children described as immature, unmotivated, lazy, inconsistent, irresponsible" . . . For years, teachers, principals, and parents have tried and failed to motivate and discipline these children. Ultimately, they blame the children themselves for their school failure, saying they just don't try hard enough or care enough to study and behave.

Recent medical research suggests that many of these children may not be unmotivated, lazy, or irresponsible at all. Instead, they may suffer from a neurobiological disorder called attention deficit hyperactivity disorder (ADHD).

ADHD—attention deficit hyperactivity disorder, also called ADD or hyperactivity—is a behavior disorder characterized by excessive degrees of inattention, impulsivity, and/or hyperactivity.

and they can be helped to succeed in school. In fact, the school system is legally obligated to locate and evaluate children who have this disorder, and if the children are found to be eligible, to provide special education and/or related services to meet their needs.<sup>2</sup>

Unfortunately, many teachers, administrators, and other school-based professionals have had little opportunity to learn about the disorder, how to identify and treat it, or their legal responsibilities to do so. Their lack of knowledge may put children with ADHD at risk of school failure—and may expose schools to lawsuits

schools' legal obligation to locate, identify, and evaluate children suspected of having this disability (known as "child find"), and also to provide a free appropriate education and needed services for those who are eligible. To be eligible under Part B of IDEA, "a child must be evaluated . . . as having one or more specified physical or mental impairments, and must be found to require special education and related services by reason of . . . these impairments."<sup>2</sup> In other words, a diagnosis of ADHD is not enough to qualify a child for special education services—the ADHD must impair the child's ability to benefit from education.

### FEDERAL STATUTES

Children with ADHD are covered by three federal statutes: the Individuals with Disabilities Education Act, Part B (IDEA); Section 504 of the Rehabilitation Act of 1973; and the Americans with Disabilities Act of 1990 (ADA). The U.S. Department of Education has the legal authority to interpret and enforce IDEA, and the Office of Civil Rights in the Department of Education interprets and enforces the provisions of Section 504 and ADA that pertain to education.

### IDEA

To clear up confusion regarding services to children with ADHD under provisions of IDEA and Section 504, the Department of Education issued a Policy Clarification Memorandum in 1991 that defines

The memorandum specifies that children with ADHD may be eligible for special education services under three categories defined by IDEA: (1) other health impaired, (2) specific learning disability, and (3) seriously emotionally disturbed.

**Other health impaired.** The memorandum from the Department of Education states: ". . . children with ADD should be classified as eligible for services under the 'other health impaired category' in instances where the ADD is a chronic or acute . . . problem that results in limited alertness, which adversely affects educational performance." Children may receive services "solely on the basis of this disorder," without having to also qualify under other categories, if the ADHD is severe enough to cause educational impairment.<sup>2</sup>

**Specific learning disability.** Children with ADHD may qualify for special education in this category if they have coexisting specific learning disabilities, although, in some cases, ADHD alone may cause a child to meet the criteria for this category. In defining specific learning disabilities, federal statutory language includes the term "minimal brain dysfunction," which is an earlier name for ADHD. Brain-imaging studies underscore this category's continuing applicability and relevance for children with ADHD.<sup>3</sup>

**Seriously emotionally disturbed.** Children with ADHD sometimes have coexisting emotional problems that qualify them for special education services. To be eligible under this category for ADHD alone, a child must exhibit one or more of the following characteristics "over a long period of time and to a marked degree, which adversely affect educational performance": an unexplained inability to learn, unsatisfactory personal relationships with teachers and peers, inappropriate behavior and feelings, general depression, and physical symptoms or fears resulting from personal or school problems.<sup>3</sup>

Part B of IDEA requires schools to find children with ADHD, to evaluate their unique educational needs with a multidisciplinary team that includes a teacher and a specialist in the area of suspected disability, and to provide eligible disabled students a free appropriate public education—including special education and related services—in accordance with an individualized education program (IEP) designed specifically for each child.

#### Section 504

Children may qualify for services to the handicapped under Section 504 of the Rehabilitation Act of 1973 if their ADHD substantially limits a major life activity, such as learning. Section 504 prohibits programs that receive federal dollars from discriminating against individuals with disabilities. It requires public schools to make accommodations for eligible handicapped children, whether or not they qualify for special education services under IDEA. Section 504 could therefore provide modifications for children with ADHD in regular classrooms, such as help with note taking and

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and evaluation.*

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changes in assignments and testing procedures.

#### ADA

The Americans with Disabilities Act prohibits discrimination against individuals with disabilities at work, at school, and in public accommodations, and is not limited (like Section 504) to those organizations and programs that receive federal funds.<sup>3</sup> ADA requires schools to make reasonable accommodations for handicapped persons, and it applies to both public and private nonsectarian schools, from day care to graduate school.<sup>4</sup>

#### ◆ ◆ ◆ ◆ ◆ **STATES' RESPONSIBILITIES**

State education agencies (SEAs) have oversight responsibility for special education. To receive federal funding under IDEA, SEAs must demonstrate to the U. S. Secretary of Education that the following eligibility requirements are met:

- state policy must provide all disabled children the right to a free appropriate public education,
- the state must submit a plan detailing policies and procedures to assure that federal funds are spent in ways consistent with IDEA,
- the state plan must contain procedural safeguards as specified in IDEA,
- the state plan must assure that special education students are educated in regular classrooms to the extent possible, and
- the state plan must assure that testing and evaluation materials and procedures are not culturally or racially biased.<sup>5</sup>

The states also have ultimate responsibility for providing a free appropriate education to disabled students. They may choose to do this one of three ways: by providing services directly, by contracting for services, or by delegating responsibility to local education agencies (LEAs). Usually, LEAs have the direct responsibility to implement state policies and to provide an appropriate education as described in a child's individualized education plan (IEP). However, if the LEA fails to do so, states must assume this responsibility, either directly or through contracts with others.

## **Implementing Legal Requirements**

To meet legal requirements, schools must (1) identify and provide services for eligible children with ADHD needing special education; (2) educate children with ADHD with nondisabled children to the extent possible; (3) eliminate practices and policies that allow disabled children to be suspended or expelled for more than 10 days for behavior associated with their disability, or deny education services during any suspension or expulsion; and (4) follow the procedural safeguards outlined in IDEA.

**Identifying and providing services for disabled children.** Identifying and providing services for eligible children with ADHD requires specialized knowledge in many areas. To be able to provide an appropriate education to all disabled children, LEAs and educators first must know that children with ADHD whose education is adversely affected by the disorder may be eligible for services under IDEA or Section 504.

Because teachers play a major role in identification, they must be able to recognize ADHD's symptoms, and know school procedures for referral and evaluation. Evaluators should make sure that evaluation is free of racial, cultural, and gender bias. Otherwise, poor children and minorities, including African Americans and Hispanics, may be overidentified as having either ADHD or coexisting conditions such as oppositional/defiant and conduct disorders, while girls may be underidentified.<sup>6</sup>

Teachers must know school policies for administering the medications that are sometimes part of ADHD's multimodal treatment, how to monitor the effects of medication, and how to report effects to

supervisors, parents, and professionals. Finally, teachers must know a variety of academic and behavioral strategies to help children with ADHD succeed in the classroom.

Lack of teacher training in intervention strategies is potentially tragic for students, who may fail because their teachers don't know how to help them learn.<sup>7</sup> It could also expose SEAs and LEAs to lawsuits on grounds of educational malpractice,<sup>8</sup> or to costly reimbursement of private school tuition to parents who remove their children from public schools.

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*Lack of teacher training... could also expose SEAs and LEAs to lawsuits on grounds of educational malpractice....*

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The Supreme Court ruled unanimously in *Florence County School District No. 4 v. Carter* that courts can order school districts to reimburse parents for private school tuition and related expenses if the public schools fail to provide an appropriate education.<sup>9</sup> The case involved reimbursing \$36,000 in private school expenses to the parents of Shannon Carter, a teenager with a learning disability and ADHD. School evaluations at first failed to identify either condition and misdiagnosed Shannon as "lazy, unmotivated, and a slow learner" who should "work harder."<sup>10</sup> After the child's problems were finally identified and she was found to be eligible for special education services, her parents rejected the school's IEP

because they felt its achievement goals were inadequate—four months' progress in reading over the course of one school year.<sup>11</sup>

Although this decision does not mean that parents can expect school districts to reimburse them for unilaterally placing their children in private schools—in the Carter case, the court ruled that the public school placement violated IDEA and the private placement was proper under IDEA—it does present two options to schools wishing to avoid such a possibility:

provide the child with a free, appropriate public education in the school system which meets the needs identified in the IEP; or choose a placement for the child which is appropriate.<sup>12</sup>

Some advocates of special education law consider this a landmark case. The Florence County School District—arguing that the ruling could mean financial disaster for public schools—was supported by 17 states and many prestigious national organizations, including the National Governor's Association, the National School Boards Association, the National Association of State Boards of Education, the National League of Cities, and the U. S. Conference of Mayors.<sup>13</sup> The decision "widens parental options, while potentially leaving school districts holding the bill."<sup>14</sup>

The Supreme Court's ruling is a wake-up call for school districts nationwide: few teachers and few schools presently know how to appropriately educate children with ADHD. One survey of teachers<sup>15</sup> revealed that 85 percent had taught children with ADHD, but the majority had received no training to do so. Of those who claimed specific training, the majority had

received a maximum of three clock hours, and only 16 percent had been trained to use a variety of techniques.

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*... educational services must not be stopped for disabled children during suspension or expulsion . . .*

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**Including disabled children.** IDEA's requirement that special education students be included in regular education classrooms to the extent possible has blurred the distinction between regular and special education and placed new demands on teachers: now all teachers need to know how to educate all students. The Department of Education memorandum<sup>2</sup> reminds state and local education agencies of their responsibility for assuring that teachers have the needed training and support:

SEAs and LEAs should take the necessary steps to promote coordination between special and regular education programs. Steps should also be taken to train regular education teachers and other personnel to develop their awareness about ADD and its manifestations and the adaptations that can be implemented in regular education programs to address the instructional needs of these children.<sup>2</sup>

**Suspending and expelling disabled children.** Schools that suspend or expel students with ADHD for more than 10 days for behavior associated with their disability, or stop education services during any suspension or expulsion, may be putting their LEAs

and SEAs at risk of litigation for failure to provide an appropriate public education. This is important information for school disciplinary officers, since children with ADHD frequently exhibit disruptive, oppositional, or defiant behavior, and have been found to have high rates of suspension and expulsion.

The U. S. Supreme Court, in *Honig v. Doe*, ruled that IDEA prohibits state or local authorities from excluding disabled children from the classroom for disruptive or even dangerous behavior associated with their disabilities. In this ruling, the Court supported Congress's intent "to strip schools of the authority to exclude disabled students," particularly students who are emotionally disturbed.<sup>5</sup>

Schools do have some recourse in serious cases: they may suspend disabled students for up to 10 days, during which time they may begin a review of the child's IEP, try to persuade parents to accept a temporary, alternative placement in the least restrictive environment, or appeal to the courts to remove a dangerous child from the school. However, exclusion of a child from class for more than 10 days is considered a change of placement and cannot occur until a determination is made as to whether the child's behavior is related to the disability.

If the misconduct is related to the disability, the child cannot be suspended for more than 10 days, but a review and a change of placement can be made and implemented in an alternate, least restrictive environment, according to procedural safeguards. If the misconduct is determined not to be related to the disability, the child can receive the school's usual disciplinary measures. However, if

the parents disagree with that determination and request a due process hearing, the child must remain in the current placement, with suspension or expulsion delayed, until hearings are completed. In any case, educational services must not be stopped for disabled children during suspension or expulsion, whether or not the cause for discipline is related to the disability (U. S. Department of Education, OSEP, letter, July 14, 1993).

The Office of Special Education Programs in the U. S. Department of Education has alerted schools that "repeated discipline problems may indicate that the services being provided to a particular child should be reviewed or changed," and suggests that in-school techniques be included in the IEP to address behavior related to the disability.<sup>5</sup> A separate disciplinary or behavior plan in the IEP or Section 504 plan can make life easier for both the student with ADHD-associated behavior problems and

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*... consequences for unacceptable behavior need to be immediate, related to the offense, and nonpunitive.*

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the school. An effective plan should stress prevention and include alternatives to out-of-school suspension and expulsion. For instance, an analysis of a child's behavior pattern might show that most incidents occur during unstructured school time, such as recess, changing classes, assemblies, or lunch. Preventative strategies in this case might include assigning constructive activities to keep the child busy and occupied,

such as lunchroom responsibilities or office work; seating the child near the teacher during assemblies; or escorting the child to classes. Closer monitoring of the child during free time may be needed,

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*... punishment for behavior beyond the child's control is both unhelpful and inappropriate.*

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accompanied by frequent positive feedback for acceptable behavior. Alternatives to out-of-school suspension might include after school detention, community service, or service to the school.

Because children with ADHD are generally unresponsive to reinforcements and punishment, consequences for unacceptable behavior need to be immediate, related to the offense, and nonpunitive. Also, since children with ADHD are unable to generalize behavior learned in one situation to other situations, the IEP should target specific behaviors for the particular situations the child encounters during the school day.

Children with ADHD need to be taught that they are accountable for their behavior, but punishment for behavior beyond the child's control is both unhelpful and inappropriate. As Accardo<sup>15</sup> says so well:

The first thing to accept about a child who has ADHD is that this child's brain functions differently. We won't be able to change how the brain functions, so we must modify our expectations. This does not mean lowering expectations;

it does mean making allowances.

**Following procedures.** IDEA is heavily procedural and includes safeguards to ensure parental participation. School districts must provide written notice to parents before identifying, evaluating, or placing children, or changing an identification, evaluation, or placement. Similar notice must accompany any change in the provision of an appropriate public education for a child. Both parents and schools can initiate due process to evaluate differences in evaluation

or placement. The failure of an education agency to follow the procedures set forth in IDEA, such as parent notification or due process, is sufficient reason to rule that a disabled child has been denied an appropriate public education.<sup>5</sup>

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## SUMMARY

Because state education agencies are responsible for overseeing IDEA and Section 504 in the state's schools, and actually providing free appropriate education if local education agencies fail to do so, a

### QUESTIONS POLICYMAKERS NEED TO ASK ABOUT PROVIDING SERVICES TO STUDENTS WITH ADHD

#### What evidence exists that

- all school districts within the state locate and provide special education or Section 504 services for eligible children with ADHD?
- teachers and staff know how to identify, evaluate, and provide an appropriate education and/or educational adaptations for eligible children with ADHD?
- all local school districts provide alternatives to out-of-school suspension or expulsion and continue educational services in the least restrictive environment to suspended or expelled disabled students?
- the state's schools of education address the needs of disabled students in the general education curriculum, so that all future teachers know how to teach all students?
- regular classroom teachers who have students with ADHD have adequate classroom support, such as classroom aides, lower pupil-teacher ratios, and resources to help them meet special education needs?
- regular and special education programs are coordinated to provide a continuum of services for students and support for teachers?
- the state plan for educating disabled students with ADHD is working, indicated by improved academic achievement; lower dropout, suspension, and expulsion rates; and fewer legal complaints?

state's education policymakers have a clear mandate to formulate policy and develop a state plan for educating disabled students. To prevent both school failure for children with ADHD and unnecessary lawsuits, they additionally must be sure the policy and plan are known and implemented in the state's schools.

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## COMING SOON

Policymakers faced with new federal mandates need the tools to lead the debate on how to serve students with ADHD. However, much information available to decisionmakers may be incomplete, conflicting, or out of date. To aid those who must make and imple-

ment policy about students with ADHD, AEL has brought together the latest understanding of ADHD in a set of informational documents, beginning with *Policy Briefs: ADHD—New Legal Responsibilities for Schools*. Upcoming companion pieces will discuss ADHD's causes and ef-

fcts, how it affects school performance, and what teachers and parents can do to help.

Need more information  
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Call Soleil Gregg at AEL,  
304/347-0485  
800/624-9120.

# EDUCATING ALL CHILDREN IN AEL'S REGION

Because IDEA calls for educating disabled children in the "least restrictive environment," children diagnosed with ADHD often remain in regular education classrooms, even if they qualify for special education or 504 plans. However, many regular education teachers feel unprepared to handle this new responsibility, and have requested more training and classroom support to help them meet the special needs of these students and others with disabilities.

Efforts are underway in AEL's four-state Region to help regular education teachers successfully educate all children, including those with ADHD. All four states offer training on ADHD and all four have collaborative systems in place to help classroom teachers meet children's academic needs and address behavioral problems.

## Training

The state departments of education in Kentucky, Tennessee, and Virginia have produced videotapes to provide training about ADHD to state teachers. Kentucky's videotape was developed with the assistance of experts from the University of Kentucky. The tape—which features students with ADHD in classroom settings—is divided into four parts: identification, assessment, medication and family interventions, and teaching strategies and classroom management. An accompanying training manual provides additional information and resources. The state department of education invited representatives from each of the state's local school districts to participate in a training-of-trainers session to learn how to use the videotapes and manual to train others in their local districts.

The Virginia Department of Education presented four state-

wide telecasts on ADHD as part of a comprehensive effort to inform teachers, administrators, and parents about the disorder, and has made videotaped copies available as a training and information resource. On each tape, a panel of experts discusses aspects of ADHD—identification; referral and assessment; and academic, behavioral, and medical interventions—and answers questions from callers at local sites. The department is working on a series of eight new videotapes to provide in-depth information, especially about academic and behavioral interventions. One of the planned tapes will focus on issues of concern to parents.

Tennessee's videotapes are designed to help regular education teachers better serve children with ADHD. The two tapes feature Dr. Robert Hunt, professor of psychiatry at the Vanderbilt School of Medicine, who delivers four 30-minute teaching segments on recognition and diagnosis; educational interventions; medications, including effects teachers should report to doctors and parents; and neurobiological differences in brain function that cause ADHD symptoms. To provide information to schools across the state, Tennessee added a chapter on ADHD this year to its new special education manual. The state department of education has used the new manual to provide inservice training to special educators, school psychologists, and district office staff in most of the state's school districts.

The West Virginia Department of Education, on request, provides teacher training on a variety of topics to all of the state's local school districts. Several counties have requested and received training on ADHD, which includes

information on identification, assessment and referral, medication, and academic and behavioral intervention strategies.

## ACROSS THE REGION: RECENT BILLS AND RESOLUTIONS ON ADHD

- Recognizing that "nearly 80 percent of students identified as having ADD drop out of school," the Virginia General Assembly issued Senate Joint Resolution No. 146 (1994) this past January. The resolution requests that teachers and administrators in the state's school divisions "...assist children suffering from ADD, with the goal of helping these children reach their potential and reducing the number of students who drop out of school."
- Kentucky House Bill 893 includes attention deficit and attention deficit hyperactivity disorders as conditions that may require special education services under the "other health impaired" category. Virginia has also added ADD to the "other health impaired" category in state regulations.
- The Tennessee Education Association passed a resolution to "encourage local affiliates to work with local school boards in educating all school personnel in recognition of symptoms and proper diagnosis of Attention Deficit Disorders (ADD) and all about educational modifications and alternative disciplinary measures for children with ADD and related disorders..."

## Classroom assistance through collaboration

Since school reform legislation has decentralized school governance in Kentucky, schools are free to design their own support systems to assist teachers. Schools generally choose one of two models: collaborative teams or consultation. Collaborative teams pull together regular and special education teachers and relevant support personnel to plan instruction and develop intervention strategies. The consultation model

uses the special education teacher as a consultant to regular education teachers, as needed. To help prevent problems with behavior and discipline for children with ADHD, IEP teams can review a school's code of conduct with regard to the child's disabilities, and specify in the IEP how to meet behavioral needs and handle infractions.

To help schools appropriately address the behavior and discipline of children with ADHD, and to disseminate the information as quickly as possible, the Tennessee Department of Education is providing technical assistance to teachers through a training-of-trainers model. Requests in this area have been so numerous that efforts to increase the department's technical assistance staff are under way. To address a student's specific academic or behavioral problems, teachers and administrators are urged to consult the child's IEP, 504 plan, or multidisciplinary team. Many students with ADHD in Tennessee are served by Section 504 rather than by IDEA. Most schools also have school support teams—comprised of the principal or a designee, the counselor, a resource teacher, and regular education

teachers—to help teachers meet the needs of students not served by either special education or 504 plans.

Virginia has established building-level Child Study Committees to help teachers meet the needs of all students having problems at school. After reviewing current existing information about the child's problem, the committee may develop an intervention plan to address both academic and behavioral concerns. The plan may include a referral for evaluation to determine if the child needs special education and related services, and, if the child is found to be eligible, both academic and behavioral issues may be addressed in the child's IEP or education plan. If parents have questions or concerns, they may contact the Virginia Department of Education. If they need help advocating for their child with a disability at school, they may request assistance from the Department for Rights of Virginians with Disabilities, which administers Virginia's Developmental Disabilities Protection and Advocacy Program, a federal program under the Developmental Disabilities Act. This department of state government

may represent the child in obtaining appropriate services prior to and throughout due process procedures, including representation in state and federal courts. There are no attorney fees for this service.

West Virginia's *Policy 2419: Regulations for the Education of Exceptional Students* (1992) provides school-based assistance teams to help regular educators meet the needs of special education students. Team members include the building principal, the classroom teacher, and other appropriate professional staff. Teams examine problems, recommend alternative instructional and/or behavioral strategies for classroom implementation, and monitor the effectiveness of these interventions. The policy spells out procedures for suspension and expulsion of disabled children, and instructs schools to provide alternatives to suspension and expulsion if the infraction is causally related to the child's disability. Behavior management plans can be developed to supplement a student's IEP when specific behaviors have been targeted for instruction. A Disciplinary Action Plan can be developed to target inappropriate behaviors, develop preventive strategies, and establish consequences for infractions.

This issue of *Policy Briefs* was researched and written by Soleil Gregg, AEL staff.

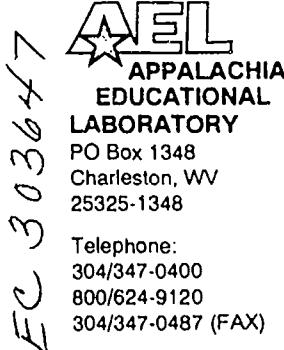
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