

DESPITE THE FACT THAT J.S. IS NOT CLASSIFIED AT THE PRESENT TIME, HE IS ELIGIBLE FOR PROTECTION PURSUANT TO SUBSECTION (k) OF THE ACT.

Appendix (k) (8) details the criteria of those children who are not yet classified:

"(A) IN GENERAL - A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated any rule or code of conduct of the local educational agency, including any behavior described in paragraph (1), may assert any of the protections provided for in this part if the local educational agency had knowledge (as determined in accordance with this paragraph) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(B) BASIS OF KNOWLEDGE - A local educational agency shall be deemed to have knowledge that a child is a child with a disability if -

(i) the parent of the child has expressed concern in writing (unless the parent is illiterate or has a disability that prevents compliance with the requirements contained in this clause) to personnel of the appropriate educational agency that the child is in need of special educational and related services;

(ii) the behavior or performance of the child demonstrates the need for such services;

(iii) the parent of the child has requested an evaluation of the child pursuant to section 1414;** or

(iv) the teacher of the child, or other personnel of the local educational agency, has expressed concern about the behavior or performance of the child to the director of special education of such agency or to other personnel of the agency."

Based upon the history of this matter, there is no question but that J.S. is entitled to the protection set forth in *Appendix (k)*.