

FEDERAL REGISTER Part II

Department of Education, 34 CFR Parts 300 and 301

Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities; Final Rule - August 14, 2006

General (§ 300.8(a))

Comment: Several commenters stated that many children with fetal alcohol syndrome (FAS) do not receive special education and related services and recommended adding a disability category for children with FAS to help solve this problem. Discussion: We believe that the existing disability categories in section 602(3) of the Act and in these regulations are sufficient to include children with FAS who need special education and related services. Special education and related services are based on the identified needs of the child and not on the disability category in which the child is classified. We, therefore, do not believe that adding a separate disability category for children with FAS is necessary to ensure that children with FAS receive the special education and related services designed to meet their unique needs resulting from FAS.

Other Health Impairment (§ 300.8(c)(9))

Comment: We received a significant number of comments requesting that we include other examples of specific acute or chronic health conditions in the definition of other health impairment. A few commenters recommended including children with dysphagia because these children have a swallowing and feeding disorder that affects a child's vitality and alertness due to limitations in nutritional intake. Other commenters recommended including FAS, bipolar disorders, and organic neurological disorders. Numerous commenters requested including Tourette syndrome disorders in the definition of other health impairment because children with Tourette syndrome are frequently misclassified as emotionally disturbed. A number of commenters stated that Tourette syndrome is a neurological disorder and not an emotional disorder, yet children with Tourette syndrome continue to be viewed as having a behavioral or conduct disorder and, therefore, do not receive appropriate special education and related services. Discussion: The list of acute or chronic health conditions in the definition of other health impairment is not exhaustive, but rather provides examples of problems that children have that could make them eligible for special education and related services under the category of other health impairment. We decline to include dysphagia, FAS, bipolar disorders, and other organic neurological disorders in the definition of other health impairment because these conditions are commonly understood to be health impairments. However, we do believe that Tourette syndrome is commonly misunderstood to be a behavioral or emotional condition, rather than a neurological condition. Therefore, including Tourette syndrome in the definition of other health impairment may help correct the misperception of Tourette syndrome as a behavioral or conduct disorder and prevent the misdiagnosis of their needs. Changes: We have added Tourette syndrome as an example of an acute or chronic health problem in § 300.8(c)(9)(i).

Specific Learning Disability (§ 300.8(c)(10))

Comment: We received several requests to revise the definition of specific learning disability to include specific disabilities or disorders that are often associated with specific learning disabilities, including Aspergers syndrome, FAS, auditory processing disorders, and nonverbal learning disabilities. Discussion: Children with many types of disabilities or disorders may also have a specific learning disability. It is not practical or feasible to include all the different disabilities that are often associated with a specific learning disability. Therefore, we decline to add these specific disorders or disabilities to the definition of specific learning disability. Changes: None.

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