



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

MAR 31 1998

Honorable Thomas C. Sawyer
House of Representatives
Washington, D.C. 20515-3514

Bear Mr. Sawyer:

This is in response to your letter dated January 13, 1998, written to Acting Assistant Secretary Scott Fleeting of the Office of Legislation and Congressional Affairs in the U.S. Department of Education (Department), which was forwarded to the Office of Special Education Programs (OSEP) for response. In your letter, written on behalf of your constituent, _____, you request clarification of the Department's policies regarding services for children with Attention Deficit Disorders (ADD) and Attention Deficit Hyperactive Disorders (ADHD). Based _____ on a recent telephone conversation with your constituent and a member of my staff, as well as your constituent's letter to you of January 7, 1998, it is our understanding that your constituent would like responses to the following specific questions:

"1. Does the Memorandum of September 16, 1991, indeed indicate that children with ADHD may receive special education services under IDEA within the category of Other Health Impaired if they meet the eligibility requirements?

2. In addition to the federal definitions provided for each handicapping condition, are there additional descriptive guidelines that would facilitate determining eligibility for Other Health Impaired?"

On September 16, 1991, the Department issued a Memorandum entitled "Clarification of Policy to Address the Needs of Children with Attention Deficit Disorders within General and/or Special Education" (Department Memorandum)(copy enclosed). This Memorandum discussed eligibility of children with ADD or ADHD (collectively referred to as "ADD") under the "other health impairment" (OHI) category, and was intended to clarify, among other matters, how children with ADD could be eligible for services under Part B of the Individuals with Disabilities

Education Act (Part B) under the OHI category¹ and reflects the Department's current position regarding this matter. No child is eligible for services under the Act merely because the child has been identified as being in a particular disability category. Children with ADD are eligible for services only if they meet the criteria for one of the disability categories and, as a result of that impairment, need special education and related services. Children with ADD who meet the criteria under OHI and need special education would be eligible under IDEA.

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Please note that we are currently in the process of reviewing comments received on the proposed regulations issued October 22, 1997, to which your constituent refers in his letter, to determine whether further clarification is needed.

The major criteria for establishing Part B eligibility under an disability category are: (1) does the child have an impairment that adversely affects educational performance and (2) does the child need special education and related services because of the impairment. See 34 CFR §300.7. Therefore, for a child with ADD to be eligible under Part B as OHI, a team of qualified professionals and the parent of the child would have to first determine whether the child has limited strength, vitality or alertness due to the ADD, and then determine whether the limited strength, vitality or alertness adversely affects the child's educational performance and results in the need for special education and related services. See 34 CFR §300.7(b)(8).

The Part B regulations do not define "limited alertness," however, the term must be viewed in the context of educational performance. If the conclusion is that a child's heightened alertness to environmental stimuli results in limited alertness with respect to educational performance, the "limited alertness" criterion of the OHI category would be satisfied.

¹In 1992, the designation of the "other health impaired" category was changed to "other health impairment" when final regulations to implement the Individuals with Disabilities Education Act Amendments of 1990 were published in final format 57 Fed. Reg. 44794 (Sept. 29, 1992). Aside from this change in terminology, the substance of the definition remained the same as it was at the time that the Department issued the September 16, 1991 Memorandum regarding services for children with ADD.

Your constituent may be interested to know that OSEP is collaborating with the National Institute of Mental Health in conducting a longitudinal study on the most effective ways of serving young children with ADD. We anticipate that results of this study should be released some time during the next school year. We are also enclosing for your constituent's information a number of documents and resources regarding services for children with ADD. In addition, your constituent may wish to contact the named official of the Ohio State educational agency at the following address and telephone number:

Mr. John Herner
Director
Division of Special Education
Ohio Department of Education
933 High Street
Worthington, OH 43085-4087

(614) 466-2560

We hope that your constituent finds the above explanation and the enclosed information helpful. If this Office can be of further assistance, please contact Dr. JoLeta Reynolds or Ms. Rhonda Weiss in the Office of Special Education Programs at (202) 205-5507.

Sincerely,



Thomas Hehir
Director
Office of Special Education
Programs

Enclosures