



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

JUL 13 1993

Douglas E. Harrington
A Psychological Corporation
4425 Jamboree
Suite 135
Newport Beach, California 92660

Dear Mr. Harrington:

This is in further response to your letter in which you express concern about the current definition of a child with traumatic brain injury at 34 CFR §300.7(b)(12). See 57 Fed. Reg. 44794, 44802 (Sept. 29, 1992) (copy enclosed).¹ This regulatory definition implements a statutory change to the definition of "children with disabilities" at section 602(a)(1) of the Individuals with Disabilities Education Act (IDEA) that includes traumatic brain injury as a separate disability category. See 20 U.S.C. §1401(a)(1).

Your letter expresses particular concern that the final regulatory definition of this disability category departs from the definition included in the Notice of Proposed Rulemaking (NPRM), which had included children with injuries caused by "an internal occurrence such as stroke or aneurysm" in the proposed regulatory definition. See 56 Fed. Reg. 41266, 41271 (Aug. 19, 1991). According to your letter, it was your understanding that the term "traumatic brain injury" was intended to include not only children sustaining traumatic head injuries but also children sustaining injuries from internal medical events, and you are concerned that the decision to exclude children who sustain brain injury from internal occurrences leaves many children with neurological disabilities "in a state of limbo."

¹"Traumatic brain injury" is defined as follows:
"an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem solving; sensory, perceptual and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma." 34 CFR §300.7(b)(12).

Following the publication of the NPRM, there was a 90-day public comment period, during which interested persons provided comments to the Department on the proposed regulatory changes, including the proposed regulatory definition of traumatic brain injury. After the public comment period was concluded, the Department carefully analyzed the public comments that were received to determine what changes, if any, were needed to address the concerns expressed by commenters.

In the final regulations published in the Federal Register on September 29, 1992, the Department also provided an analysis of the public comments received and changes that occurred since the publication of the NPRM. A summary of the public comments that were received and a discussion regarding the change limiting children with traumatic brain injury to children with injuries caused by "an external physical force" is included on pages 44842-3.

In response to your particular concerns, you should note the Department's discussion that responds to those commenters who sought clarification as to whether there was overlap between the definitions of "traumatic brain injury" and "other health impaired" and the discussion that responds to other commenters who asked if particular internal occurrences would be considered a traumatic brain injury, such as infection, tumors, etc. See 57 Fed. Reg. at 44842. Based on these comments, the Department determined that including the phrase "internal occurrence such as a stroke or aneurysm," would expand the category "traumatic brain injury" beyond its use in professional practice. Therefore, to ensure that the definition of the term was consistent with congressional intent that this disability category encompass only children with "traumatic brain injury" the Secretary determined that the phrase "or by an internal occurrence such as a stroke or aneurysm" should be deleted. Id; See also H. Rept. No. 544, 101st Cong., 2nd Sess., 5-6 (1990).

The deletion of this phrase was not intended to limit eligibility of children with acquired internal injuries to the brain for services under Part B. Children whose educational performance is adversely affected as a result of acquired injuries to the brain caused by internal occurrences may meet the criteria of one of the other disability categories, such as "other health impairment," "specific learning disability," or "multiple disability."

Page 3 - Douglas E. Harrington

Part B requires public agencies to make available to all eligible children with disabilities a free appropriate public education (FAPE), which includes the provision of special education and related services at no cost to parents. To be eligible, a child must be evaluated as having one or more of the designated disabilities that adversely affect educational performance and cause the child to need special education and related services. 34 CFR §300.7.

Once a decision has been made that a child is a child with a disability, an individualized educational program (IEP) must be developed and implemented. Under Part B, the IEP must be developed solely on the basis of the individual child's educational needs, not on the basis of the category of the child's disability. I hope this information is helpful to you.

Sincerely,



Patricia J. Guard
Acting Director
Office of Special Education
Programs

Enclosure

cc: Mr. Leo Sandoval
California State Department
of Education