



SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

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LEGAL UPDATE

October 24, 2022

To: Superintendents, Member School Districts (K-12)

From: Jennifer E. Nix, General Counsel JEN

**Subject: SB 1016 – Special Education: Eligibility:
Fetal Alcohol Spectrum Disorder
Memo No. 27-2022**

On September 27, 2022, Governor Newsom approved Senate Bill 1016, which requires the State Board of Education include “fetal alcohol spectrum disorder” in the definition of “other health impairment” located in 5 C.C.R. § 3030 (“Section 3030”).

Current Section 3030 provides that a child who is assessed as having a specified health impairment or other health impairment is entitled to special education and related services. That regulation defines “other health impairment” as having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the environment that is due to a chronic or acute health problem and adversely affects the child’s educational performance. The law currently contains a non-exclusive list of chronic or acute health problems that could be relied on in qualifying a student under other health impairment, including asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome. This new law requires that “fetal alcohol spectrum disorder” be added to that list.

SB 1016 is effective January 1, 2023, but does not contain a deadline for the State Board of Education to update the regulation. Local Education Agencies should ensure they are using the current version of Section 3030 following the State Board of Education’s update to that regulation.

Please note that being diagnosed with fetal alcohol spectrum disorder does not, in and of itself, make a child eligible under other health impairment. The child must still be assessed for eligibility and meet the eligibility criteria in Section 3030.



If you receive information that a student has been diagnosed with fetal alcohol spectrum disorder, you should continue to follow all relevant law, including complying with your child-find obligations, if appropriate; conducting assessments in all areas of suspected disability, if necessary; and developing an appropriate IEP if the student is found eligible under the IDEA.

Please contact our office with questions regarding this Legal Update or any other legal matter.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

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