

## § 300.7

## 34 CFR Ch. III (7–1–06 Edition)

directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device.

The term includes—

(a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child’s customary environment;

(b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;

(c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(e) Training or technical assistance for a child with a disability or, if appropriate, that child’s family; and

(f) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child.

(Authority: 20 U.S.C. 1401(2))

### § 300.7 Child with a disability.

(a) *General.* (1) As used in this part, the term *child with a disability* means a child evaluated in accordance with §§ 300.530–300.536 as having mental retardation, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, serious emotional disturbance (hereafter referred to as emotional disturbance), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

(2)(i) Subject to paragraph (a)(2)(ii) of this section, if it is determined, through an appropriate evaluation under §§ 300.530–300.536, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not

special education, the child is not a *child with a disability* under this part.

(ii) If, consistent with § 300.26(a)(2), the related service required by the child is considered special education rather than a related service under State standards, the child would be determined to be a *child with a disability* under paragraph (a)(1) of this section.

(b) *Children aged 3 through 9 experiencing developmental delays.* The term *child with a disability* for children aged 3 through 9 may, at the discretion of the State and LEA and in accordance with § 300.313, include a child—

(1) Who is experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and

(2) Who, by reason thereof, needs special education and related services.

(c) *Definitions of disability terms.* The terms used in this definition are defined as follows:

(1)(i) *Autism* means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age 3, that adversely affects a child’s educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child’s educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in paragraph (b)(4) of this section.

(ii) A child who manifests the characteristics of “autism” after age 3 could be diagnosed as having “autism” if the criteria in paragraph (c)(1)(i) of this section are satisfied.

(2) *Deaf-blindness* means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that

they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

(3) *Deafness* means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child's educational performance.

(4) *Emotional disturbance* is defined as follows:

(i) The term means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(C) Inappropriate types of behavior or feelings under normal circumstances.

(D) A general pervasive mood of unhappiness or depression.

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) The term includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance.

(5) *Hearing impairment* means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section.

(6) *Mental retardation* means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance.

(7) *Multiple disabilities* means concomitant impairments (such as mental retardation-blindness, mental retardation-orthopedic impairment, etc.), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the

impairments. The term does not include deaf-blindness.

(8) *Orthopedic impairment* means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

(9) *Other health impairment* means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that—

(i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, and sickle cell anemia; and

(ii) Adversely affects a child's educational performance.

(10) *Specific learning disability* is defined as follows:

(i) *General*. The term means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

(ii) *Disorders not included*. The term does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(11) *Speech or language impairment* means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.

(12) *Traumatic brain injury* means an acquired injury to the brain caused by an external physical force, resulting in

### § 300.8

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 to brain injuries induced by birth trauma.

(13) *Visual impairment including blindness* means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

(Authority: 20 U.S.C. 1401(3)(A) and (B); 1401(26))

### § 300.8 Consent.

As used in this part, the term *consent* has the meaning given that term in § 300.500(b)(1).

(Authority: 20 U.S.C. 1415(a))

### § 300.9 Day; business day; school day.

As used in this part, the term—

(a) Day means calendar day unless otherwise indicated as business day or school day;

(b) *Business day* means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day, as in § 300.403(d)(1)(ii)); and

(c)(1) *School day* means any day, including a partial day, that children are in attendance at school for instructional purposes.

(2) The term *school day* has the same meaning for all children in school, including children with and without disabilities.

(Authority: 20 U.S.C. 1221e-3)

### § 300.10 Educational service agency.

As used in this part, the term *educational service agency*—

(a) Means a regional public multi-service agency—

### 34 CFR Ch. III (7-1-06 Edition)

(1) Authorized by State law to develop, manage, and provide services or programs to LEAs; and

(2) Recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary and secondary schools of the State;

(b) Includes any other public institution or agency having administrative control and direction over a public elementary or secondary school; and

(c) Includes entities that meet the definition of *intermediate educational unit* in section 602(23) of IDEA as in effect prior to June 4, 1997.

(Authority: 20 U.S.C. 1401(4))

### § 300.11 Equipment.

As used in this part, the term *equipment* means—

(a) Machinery, utilities, and built-in equipment and any necessary enclosures or structures to house the machinery, utilities, or equipment; and

(b) All other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audiovisual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

(Authority: 20 U.S.C. 1401(6))

### § 300.12 Evaluation.

As used in this part, the term *evaluation* has the meaning given that term in § 300.500(b)(2).

(Authority: 20 U.S.C. 1415(a))

### § 300.13 Free appropriate public education.

As used in this part, the term *free appropriate public education* or *FAPE* means special education and related services that—

(a) Are provided at public expense, under public supervision and direction, and without charge;

(b) Meet the standards of the SEA, including the requirements of this part;