

Date of Hearing: June 29, 2022

ASSEMBLY COMMITTEE ON EDUCATION  
Patrick O'Donnell, Chair  
SB 1016 (Portantino) – As Introduced February 14, 2022

**SENATE VOTE:**

**SUBJECT:** Special education: eligibility: fetal alcohol spectrum disorder

**SUMMARY:** Requires the State Board of Education (SBE) to include “fetal alcohol spectrum disorder” (FASD) in the regulatory definition of “other health impairment” for the purpose of special education eligibility. Specifically, **this bill:**

- 1) Requires the SBE to include FASD in the definition of “other health impairment” in Section 3030 of Title 5 of the California Code of Regulations.

**EXISTING LAW:**

- 1) Defines, in the federal Individuals with Disabilities Education Act (IDEA) and in state law, “individuals with exceptional needs” as persons who meet the following requirements:
  - a) Identified by an individualized education program (IEP) team as a child with a disability, as that phrase is defined in federal law.
  - b) Their impairment requires instruction and services which cannot be provided with modification of the regular school program in order to ensure that the individual is provided a free appropriate public education; and
  - c) Meet eligibility criteria set forth in regulations adopted by the SBE.
- 2) Specifies, through regulations, that a child qualifies as an individual with exceptional needs, pursuant to state law, if the results of the required assessment demonstrate that the degree of the child's impairment requires special education in one or more program options.
- 3) Specifies, through regulations, that the decision as to whether or not the assessment results demonstrate that the degree of the child's impairment requires special education is made by the IEP team, taking into account all the relevant material which is available on the child.
- 4) Defines, in federal law and in state regulations, “other health impairment” to mean 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:
  - a) 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, sickle cell anemia, and Tourette syndrome; and
  - b) Adversely affects a child's educational performance.

**FISCAL EFFECT:** According to the Senate Appropriations Committee:

- To the extent that the bill results in additional students qualifying as individuals with exceptional needs or additional services provided to existing special education students, it could result in increased costs to local school districts. The magnitude of these costs is unknown and would largely depend on the number of students newly eligible and the level of instruction and services that would be necessary. To the extent that the Commission on State Mandates determines that the proposed changes exceed what is required under federal law, these activities could be deemed to be reimbursable by the state resulting in potentially significant Proposition 98 General Fund costs each year.
- The workload associated with the regulatory changes is anticipated to be minor and absorbable within existing resources.

**COMMENTS:**

***Need for the bill.*** According to the author, “In California, most professionals are not trained in Fetal Alcohol Spectrum Disorder (FASD) or even aware of the disorder. As a result, the overwhelming number of affected children and adults in the state do not receive a diagnosis and, therefore, do not receive appropriate care. Without proper diagnosis and interventions, individuals with FASD face a life of challenges, including behavioral, cognitive, mental health, substance use, homelessness, and involvement with the criminal justice system, as youth and adults. Even having a typical IQ is not protective. Without early diagnosis and intervention, 80% of adults with FASD and typical range IQ will never live independently as adults.”

Currently, FASD is not a recognized category for special education under the Individuals with Disabilities Education Act (IDEA). It is also not named as a disorder under the Other Health Impaired category by the California Department of Education. Hence, students with the most prevalent developmental disability in the US are being underserved in school districts across the state, with detrimental lifelong consequences.”

***FASD conditions and incidence.*** According to the Centers for Disease Control and Prevention (CDC), FASD is a group of conditions that can occur in a person who was exposed to alcohol before birth. These effects can include physical problems and problems with behavior and learning. Often, a person with FASD has a mix of these problems. The CDC identifies several FASD diagnoses:

***Fetal Alcohol Syndrome (FAS):*** FAS represents the most involved end of the FASD spectrum. People with FAS have central nervous system problems, minor facial features, and growth problems. People with FAS can have problems with learning, memory, attention span, communication, vision, or hearing. They might have a mix of these problems. People with FAS often have a hard time in school and trouble getting along with others.

***Alcohol-Related Neurodevelopmental Disorder (ARND):*** People with ARND might have intellectual disabilities and problems with behavior and learning. They might do poorly in school and have difficulties with math, memory, attention, judgment, and poor impulse control.

*Alcohol-Related Birth Defects (ARBD):* People with ARBD might have problems with the heart, kidneys, or bones or with hearing. They might have a mix of these.

*Neurobehavioral Disorder Associated with Prenatal Alcohol Exposure (ND-PAE):* A child or youth with ND-PAE will have problems in three areas: (1) thinking and memory, where the child may have trouble planning or may forget material he or she has already learned, (2) behavior problems, such as severe tantrums, mood issues, and difficulty shifting attention from one task to another, and (3) trouble with day-to-day living, which can include problems with bathing, dressing for the weather, and playing with other children. In addition, to be diagnosed with ND-PAE, the mother of the child must have consumed more than minimal levels of alcohol before the child's birth.

The CDC notes that FASD can be hard to diagnose because there is no medical test for these conditions, and because other disorders, such as attention-deficit/hyperactivity disorder (ADHD) and Williams syndrome, share some symptoms with FASD. To diagnose FASD, doctors typically look for prenatal alcohol exposure, central nervous system problems, lower-than-average height and/or weight, and abnormal facial features. The CDC estimates that up to 1 in 20 school-aged children may have FASD.

***FASD and identification for special education.*** According to the CDC, early interventions for children with FASD, such as diagnosis before age 6, stable home environment, medications, and special education and other social services, can improve their development.

This bill would specifically identify FASD as a condition included in the disability category "other health impairment." Current law and regulations define this category to mean "limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment." Law and regulations provide a non-exhaustive list of examples of such conditions, 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. Law and regulations also require that for one of these conditions to qualify a student for special education services it must adversely affect a child's educational performance.

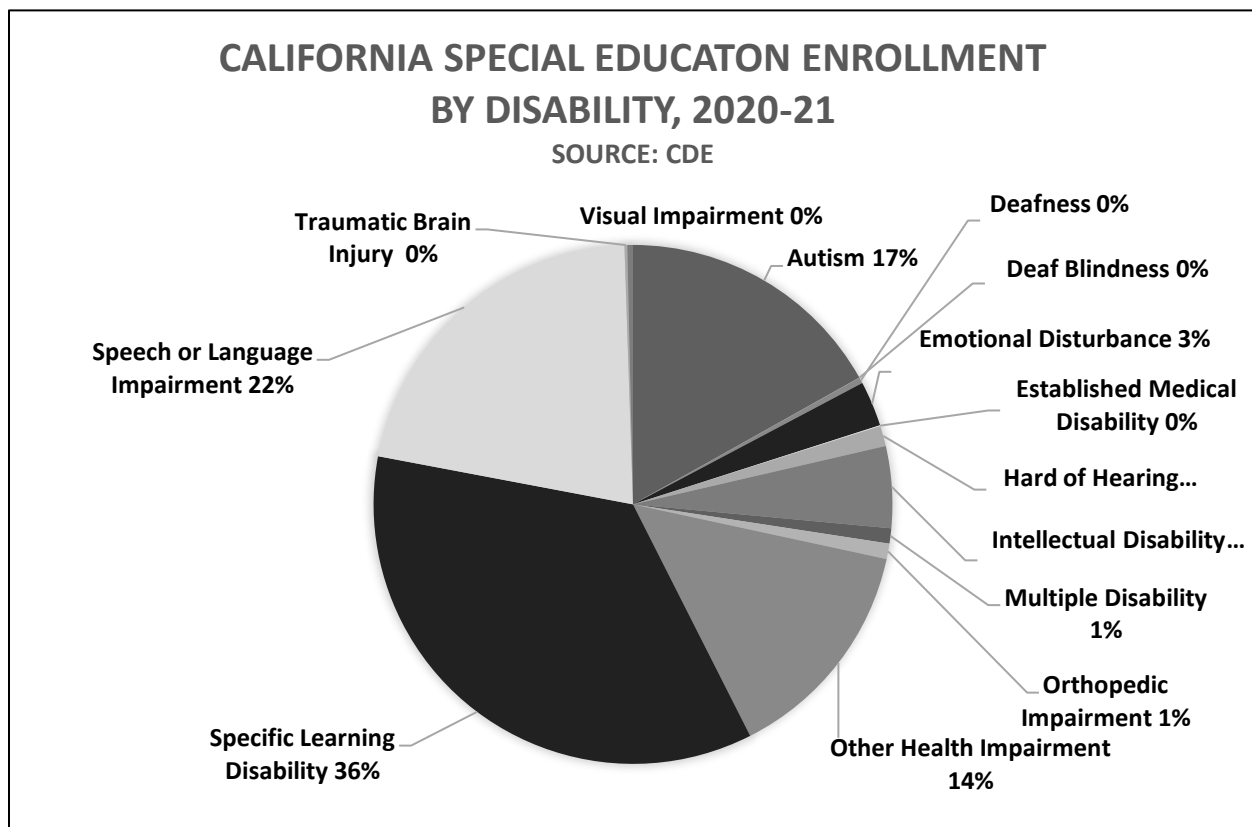
According to the author, specifically listing FASD as an example of a health impairment is necessary because the absence of this disorder in the list of examples causes children to be under-identified as qualifying for special education services. Additionally, according to the author, when they do qualify for special education services based on other eligible deficits, those services may be inappropriate or inadequate to their needs. For example, students may be deemed eligible based on speech/language impairments, emotional disturbance, or specific learning disabilities, but supports and accommodations rarely address executive functioning, dysmaturity, sensory, memory, and self-regulatory or reasoning impairments that can cause challenging behavior with FASD.

Opponents of this measure argue the list of health impairments in law is non-exhaustive, and that students with FASD can already be identified for special education services without the disorder specifically included in the list of examples of qualifying conditions.

***Special education enrollment in California.*** Under federal and state law, when children are three years of age and older, they may be identified as requiring additional support not offered in

the general education program. When this occurs, LEAs refer students for professional evaluation to determine if they qualify for special education. If the evaluation indicates that a student has a disability, and that the disability interferes with his or her education, the LEA is legally obligated to provide the student with special education services. Students identified as qualifying for special education receive an IEP—a written legal document developed by a team of stakeholders, including a student’s family—that outlines the students’ educational goals and the services that will be provided to meet those goals.

In the 2020-21 school year students with disabilities comprised 12.5% of California’s public prekindergarten through 12th grade school enrollment. As noted in the chart below, 14% of all students with disabilities were found to have a disability in the category “other health impairment.”



**Arguments in support.** FASD United writes, “FASD is an overarching phrase for a neurodevelopmental disability caused by prenatal alcohol exposure. Prenatal alcohol exposure can result in a spectrum of lifelong manifestations, varying from mild to severe and encompassing a variety of cognitive, behavioral, emotional, and adaptive functioning defects. According to the CDC, FASD is more common than Autism, affecting 2-5% of every first-grade child in the US. Of the 6 million children in California schools, as many as 300,000 may have FASD. Despite the prevalence and life-long impacts of FASD, it is not a recognized category for special education and is not named as a disorder under the Other Health Impaired category by the California Department of Education. As such, students with the most prevalent developmental disability in the US are being underserved, with missed opportunities to intervene and promote life-long changes.

As the nation struggles with the hidden public health crisis resulting from prenatal alcohol exposure, we are encouraged by the action being taken to pass this vital legislation. Because nearly half of adolescents and young adults with serious FASD impairments experience school disruption, addressing FASD through the California Department of Education is essential. SB 1016 ensures that students with FASD have access to the general curriculum under the least restrictive environment consistent with the Individuals with Disabilities Education Act.”

***Arguments in opposition.*** The California Teachers Association writes, “While we recognize that FASD is a chronic condition for students, this legislation attempts to separate and identify FASD as a separate disability, rather than recognizing that the continuum of behaviors and struggles experienced by students with FASD are served based upon those behaviors and difficulties. Where those behaviors and difficulties result in identification, services and supports can and will be determined by the IEP team.

The Individuals with Disabilities Education Act (IDEA) states that other designations not listed as OHI but are included under this umbrella include FASD. The reason FASD isn't specifically mentioned in IDEA's regulations, according to the Department, is “...because these conditions are commonly understood to be health impairments...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.” (71 Fed. Reg. at 46550). IDEA itself recognizes that its list of disabilities is non-exhaustive and recognizes that disabilities and impairments are a continuum. FASD currently may fall under OHI or other currently recognized disabilities, and students who are not identified as a student with an IEP are eligible for services under 504 plans.”

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

FASD Now! (sponsor)  
Alcohol Justice  
Alliance for Children's Rights  
American Academy of Pediatrics, California, Chapter 2  
Best Start Region 1  
California Alcohol Policy Alliance  
California Council on Alcohol Problems  
Children's Advocacy Institute  
FASD Network of Southern California  
FASD United  
First 5 Santa Clara County  
Fresno Council on Child Abuse Prevention  
Innovate Public Schools  
John Burton Advocates for Youth  
Kids in Common  
McGowan Advocacy Group  
Patricia Kasper Training Services, LLC  
Santa Clara County Office of Education  
Sonoma Valley Democratic Club

The Arc and United Cerebral Palsy California Collaboration  
The Arc of Riverside County  
The Children's Initiative  
The Institute for Fetal Alcohol Spectrum Disorder Discovery, UC San Diego  
The West Contra Costa Alcohol Policy Coalition  
United Parents  
Violence Intervention Program Community Mental Health Center  
Western Center on Law & Poverty, Inc.

**Oppose**

California Teachers Association

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