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TO: Preschool Advocates

FROM: Eve Hershcopf, Senior Staff Attorney

RE: Legal Framework for State Preschool and Prekindergarten Family Literacy Program to Enable Program “Blending and Braiding” for Full-Day/Full-Year Care

INTRODUCTION

As California focuses on providing preschool and other early education opportunities for young children, there is an increased need for understanding the programs that comprise the state’s existing publicly-funded child care and development system.¹ Preschool advocates, early care and education (ECE) program administrators, and California Department of Education Child Development Division (CDE/CDD) staff are all interested in finding ways to “blend and braid” State Preschool and the Prekindergarten and Family Literacy (PKFL) programs with other ECE programs in order to provide both the early education component parents want for their children and the full-day/full-year care many parents need in order to work, obtain training or attend school.

In beginning to assess the opportunities for “blending and braiding” publicly-funded child development programs, as well as identifying barriers to seamless integration of various programs, it is essential to understand the legal frameworks that govern the state’s various ECE programs.² This memo will provide a basic description of the legal framework for State Preschool and the PKFL program, and notes areas in which the legal framework for these programs may provide CDE/CDD with flexibility to facilitate the blending and braiding of programs and services.

Those who have been toiling in the ECE fields for many years are aware there is no comprehensive description of the legal frameworks governing California’s state-funded child care and development programs, including federal and state laws, federal and state regulations, subregulatory materials, and state contracts. With a clearer understanding of the legal authority that defines various ECE programs, members of the child care and development field will be better able to determine the types of changes that may be needed in order to “blend and braid” programs, and to assess whether the needed changes can be accomplished simply through modifications of contractor practices, or whether regulatory changes by state administrative agencies are required, or whether legislative action is necessary to remove statutory barriers to program integration.

¹ The terms “child care and development” and “early care and education” are used interchangeably in this memo.

² This initial memo will not include a description of the legal framework for First Five’s Power of Preschool programs.

The phrase “blending and braiding” is used as shorthand to describe the combining of ECE programs that have varying program rules and/or use different funding streams.³ The phrase encompasses all of the changes that would have to be made in order to enable an agency that has contracted with CDE/CDD to provide part-day/part-year State Preschool or PKFL services to expand funding and services or collaborate with another agency in order to provide full-day/full-year care for those families that need such care. The phrase also contemplates funding and program changes to enable a family with a child enrolled in part-day State Preschool or PKFL to access various forms of “wrap-around” care, including license-exempt, in order to provide the full level of care needed by the family and support parental choice.

There are a wide range of programmatic and fiscal components that will likely need to be aligned in some manner in order to allow for successful combinations and collaborations between State Preschool and PKFL and other ECE programs. The programmatic components include:

- **eligibility requirements** (child’s age, geographic location, family income, “need” for care);
- **priorities for services** (lowest income, receiving child protective services, at risk of abuse or neglect, disability or other special needs, children of incarcerated parents, English language learners, etc.);
- **staffing requirements** (ratios of adults to children, ratios of teachers and aides to children, age groupings);
- **staffing qualifications** (teacher qualifications, credentials, licensing status, criminal background checks);
- **program content** (educational, social and emotional development, health and social services, family literacy); and
- **program quality** (child assessments, parental involvement, staff development, health and safety requirements, program assessment and quality monitoring).

The fiscal components include:

- **agency eligibility requirements**
- **facility requirements**
- **contracting requirements**
- **reporting requirements**
- **reimbursement rates** (Standard Reimbursement Rate, Regional Market Rate, rate adjustment factors, advance apportionments, limits of reimbursement, attendance percentage, over-enrollment)
- **reimbursable costs** (prorating of costs)
- **days of operations** (minimum days of operation, staff training days, emergency closure)

³ The funding for California’s ECE programs is derived from state or federal monies, but the way in which those funds are directed to various ECE programs through the budget process results in separate funding for different programs.

- **accounting requirements and methodology** (what counts as revenue and as expenses including indirect and administrative costs, fundraising, handling family fees, interest, reserve accounts, contingency funds)
- **audits**

This initial memo's description of the legal framework for State Preschool and PKFL will explain where the legal authority for these components can be found, but will not provide detailed analysis of State Preschool and PKFL program elements.

FEDERAL LEGAL FRAMEWORK

On both the federal and state levels there is a legal hierarchy comprised of the Constitution, statutes (laws) and regulations that structure the interpretation of every issue and legal question.

The United State Constitution is the highest law of the land. Any law, whether federal laws enacted by Congress or state laws passed by state legislatures, will be struck down by the courts if found to be in violation of a constitutional provision. Congress has the power to enact an array of laws, including those that create federally-funded programs. Congress grants authority to federal executive administrative agencies to implement the legislative mandates set forth in the statutes it has enacted. In recent years, Congress has created "block grants" programs that provide an overarching federal structure combined with funding to the states. Although the block grant programs are administered on the national level by federal administrative agencies, Congress has authorized the states to administer the funding for those federal programs on the state level. Two federal laws that are particularly relevant to California's ECE system are those governing the Child Care and Development Fund (CCDF)⁴ which provides a block grant to California to help fund several state ECE programs (though not State Preschool or PKFL),⁵ and the Temporary Assistance to Needy Families (TANF)⁶ block grant which provides funding for California's CalWORKS cash assistance program for low income families and includes funding for child care as a supportive services for families transitioning from welfare to work.

The U.S. Department of Health & Human Services, Administration for Children & Families (DHHS/ACF) is the federal agency with responsibility for administering CCDF, TANF and the Head Start program.⁷ All federal agencies administer programs through regulations containing definitions, requirements, restrictions and other elements necessary for the implementation of

⁴ Child Care and Development Block Grant, 42 USC 9858 et. seq. (statute), available at: <http://www.acf.hhs.gov/programs/ccb/law/ccdbgact/ccdbgact.pdf>.

⁵ The bulk of federal CCDF funding, including TANF funding transferred to CCDF, is used for CalWORKs child care, Alternative Payment Program child care, the General Child Care & Development Program, and Migrant Child Care & Development. See, Appendix A, CDE/CDD's Child Care & Development Local Assistance Funding chart.

⁶ The TANF program was authorized under the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), Pub.L. 104-193, 110 Stat. 2105, enacted August 22, 1996. The program was reauthorized as part of the Deficit Reduction Act of 2005 (DRA), Pub. L. 109-171, S. 1932, sec. 7101, available at: <http://www.hhs.gov/ocr/tanf/TANFBill.pdf>.

⁷ U.S. DHHS, Administration for Children & Families website: <http://www.acf.dhhs.gov/index.html>.

legislatively mandated programs, and these regulations must be consistent with their authorizing statutes. The regulations development process requires DHHS/ACF and other federal administrative agencies to provide an opportunity for public comment on proposed regulations before the regulations are finalized and legally enforceable. The regulations promulgated by DHHS/ACF for CCDF,⁸ for TANF,⁹ and for Head Start¹⁰ provide direction to state and local agencies in the administration of these programs.

The state has a large role in administering CCDF and TANF funds pursuant to federal regulations, and in making certain that federal funding and programmatic requirements are met. The federal regulations with the greatest impact on California's ECE programs are the CCDF regulations. It is not clear whether, or to what extent, the CCDF regulations may act to create barriers to the blending and braiding of State Preschool and PKFL with other California ECE programs. An initial assessment indicates that the flexibility in program administration the CCDF statute and regulations¹¹ provide would allow California to structure its ECE programs in ways that facilitate collaboration and combinations of programs and funding.¹² A more thorough analysis would require additional legal research as well as conversations with DHHS/ACF, CDE/CDD, and the contractors who administer State Preschool and PKFL programs in order to clarify whether current "barriers" are based in strictures in the federal law or regulations, interpretations by DHHS/ACF or CDE/CDD, or contractor practices, and then offer possible solutions to address those constraints.

Head Start is a third federally-funded program which is a component of the early care and education landscape. Unlike the CCDF and TANF block grants, Head Start¹³ provides federal funding directly to local agencies for the provision of Head Start programs. Although California has the nation's largest Head Start program,¹⁴ the state has a far smaller role with respect to the administration of Head Start. The Head Start program in California is administered through a system of 66 grantees and 72 delegate agencies. While the majority of these agencies also have contracts with CDE to administer general child care and/or State Preschool programs, and many of the programs are located at the same site, the state's responsibilities are limited. CDE/CDD is responsible for helping to facilitate collaborative

⁸ CCDF regulations, 45 CFR Parts 98 & 99, available at:
http://www.access.gpo.gov/nara/cfr/waisidx_07/45cfr98_07.html.

⁹ TANF regulations, 45 CFR Part 200, et. seq., available at:
http://www.access.gpo.gov/nara/cfr/waisidx_06/45cfrv2_06.html.

¹⁰ Head Start Program Performance Standards & Other Regulations, 45 CFR 1301 et. seq., available at:
http://www.access.gpo.gov/nara/cfr/waisidx_06/45cfrv4_06.html#1301.

¹¹ 45 CFR § 98.1 Goals and purposes.

(a) The goals of the CCDF are to:

(1) Allow each State maximum flexibility in developing child care programs and policies that best suit the needs of children and parents within the State.

¹² CCLC has selected the most relevant CCDF regulations regarding program administration; the compilation is attached as Appendix B.

¹³ Head Start Act, 42 USC 9801, et. seq. (statute), available at:
http://www.acf.hhs.gov/programs/hsb/legislation/HS_act.html.

¹⁴ In 2006, over 106,000 California children were served by Head Start with a program budget of over \$822 million.

efforts between state-funded child development programs and Head Start agencies,¹⁵ and children's transitions from Head Start agencies to elementary education programs.¹⁶

Despite the limited authority CDE/CDD has with respect to Head Start administration, given the size of the Head Start program there is clearly an interest in exploring the possibilities for blending and braiding Head Start programs with State Preschool or PKFL. The Collaborative Partners Work Group (CPWG), assisted by the California Head Start-State Collaboration Office, invested significant effort in analyzing and describing Head Start/State Preschool and other collaboration options. This work resulted in a report, "*Full-Day, Full-Year Early Care and Education Partnerships*," published in 2002.

The CPWG report described a Head Start/State Preschool program model and identified seven strengths of these collaborations: family needs for full-day services are met; families receive comprehensive services; curriculum and materials are shared increasing affordability; Head Start training dollars are available to the entire program; programs coordinate a single point of access for service delivery; use of facilities and other resources is maximized; and options for parents are increased. The report also identified nine challenges to successful Head Start/State Preschool collaborations: differences in income eligibility and eligibility priorities, class size (which increases the financial burden brought about by reduced revenue in the State Preschool portion of the program), staff qualifications (differing requirements set forth in Title 5 vs. Title 22 regulations¹⁷), length of child eligibility period; differences in enrollment vs. attendance definition may cause confusion; differences in ability to serve over-income children with disabilities; complexity of accounting increases; parents may have to duplicate paperwork if Head Start/State Preschool partners are separate agencies. The report offered recommendations for possible solutions to these challenges and also reviewed acceptable fiscal approaches, finding cost-allocation as the most viable approach for a Head Start/State Preschool collaboration. The CPWG report also briefly reviewed state and federal fiscal requirements and guidance.¹⁸

CALIFORNIA'S LEGAL FRAMEWORK

Like the U.S. Constitution on the federal level, California has a constitution which sets out overarching features of governance for the state. The California constitution is not a significant element in analyzing legal authority for state child care and development programs, although a few provisions of the constitution contain prohibitions that can come into play. For example,

¹⁵ Because of its federal-to-local funding, Head Start programs were often not included in policy and implementation discussions at the state level. As a result, Collaboration Office grants were developed to create a visible presence for Head Start at the state level and to assist in the development of multi-agency and public-private partnerships among Head Start and other interested stakeholders. California was first awarded a grant in 1992 to the CDE, and the California Head Start-State Collaboration Office (CHSSCO) was created.

¹⁶ See, Educ. Code §8499.10.

¹⁷ See, CCLC memo, "Analysis of Title 22 and Title 5 Regulations Affecting Preschool Programs."

¹⁸ The CPWG report, "*Full-Day, Full-Year Early Care and Education Partnerships*," is available at: <http://www.cde.ca.gov/sp/cd/re/documents/edpartnerships.pdf>, and also attached as Appendix C.

Article IX, §8 of the California Constitution addresses limitations on religious instruction in school (including preschool) settings.¹⁹ This constitutional prohibition is made explicit in regulations governing California's child care and development programs, including State Preschool and PKFL.²⁰

California's laws, enacted by the state legislature, must be consistent with both state and federal constitutional provisions. Once a state law has been passed by the legislature, including those that govern the state's child care and development programs, it can only be changed by subsequent legislative action (unless it is struck down as unconstitutional by a court).

California's state laws are grouped together by topic into "code" sections. The vast majority of laws that govern California's child development programs are found in the Education Code²¹, the Health & Safety Code²², and the Welfare & Institutions Code.²³

The Education Code contains the most significant statutes controlling the child development programs overseen and funded by the CDE/CDD. Chapter 2, the Child Care and Development Services Act, contains 24 separate Articles (topics).²⁴ Article 7 contains provisions specific to State Preschool and to the Prekindergarten and Family Literacy program,²⁵ Article 8 addresses

¹⁹ *No public money shall ever be appropriated for the support of any sectarian or denominational school, or any school not under the exclusive control of the officers of the public schools; nor shall any sectarian or denominational doctrine be taught, or instruction thereon be permitted, directly or indirectly, in any of the common schools of this State.* Article XVI, §5 provides additional prohibitions on appropriations of public funds to help to support any school or other institution controlled by a sectarian denomination. *See also*, CCDF regulations 45 CFR 98.3: § 98.3 Effect on State law.

(a) Nothing in the Act or this part shall be construed to supersede or modify any provision of a State constitution or State law that prohibits the expenditure of public funds in or by sectarian organizations, except that no provision of a State constitution or State law shall be construed to prohibit the expenditure in or by sectarian institutions of any Federal funds provided under this part.

²⁰ 5 CCR §18017, Prohibition Against Religious Instruction or Worship: *"The contractor shall not provide nor be reimbursed for child care and development services that include religious instruction or worship."* This same prohibition can also be found in subregulatory materials used by CDD, including the Funding Terms & Conditions that define the contractual relationships CDD maintains with its contractors; *see*, CPRE Part-Day Preschool Funding Terms and Conditions and Program Requirements for Child Development Programs; Prohibition Against Religious Instruction or Worship, p.11; available at:

<http://www.CDE/CDD.ca.gov/fg/aa/cd/documents/cpre07.doc>, and CFDP, Full-Day Preschool, p. 11; available at: <http://www.CDE/CDD.ca.gov/fg/aa/cd/documents/cfdp07.doc>; and CPKP, Prekindergarten and Family Literacy Part-Day, p.13; available at: <http://www.cde.ca.gov/fg/aa/cd/documents/cpkp07.doc>; and CPKF, Prekindergarten and Family Literacy Full-Day, p. 13; available at: <http://www.cde.ca.gov/fg/aa/cd/documents/cpkf07.doc>.

²¹ These laws are set forth in Chapter 2 (Child Care and Development Services Act) of Title 1 (general Education Code Provision), Division 1, Part 6 (Education Programs – State Master Plans), available at: <http://www.leginfo.ca.gov/cgi-bin/calawquery?codesection=edc&codebody=&hits=20>.

²² Health & Safety Code, Division 2 (Licensing Provisions), Chapters 3.35(Child Care Provider Registration), 3.4 (California Child Day Care Act), 3.5 (Day Care Centers), 3.6 (Family Day Care Homes), 3.65 (Employer-Sponsored Child Care Centers); available at:

<http://www.leginfo.ca.gov/cgi-bin/calawquery?codesection=hsc&codebody=&hits=20>.

²³ Welfare & Institutions Code, Division 9 (Public Social Services), Part 3 (Aid and Medical Assistance), Chapter 2 (California Work Opportunity and Responsibility to Kids Act), Article 3.2 (Welfare-to-Work Activities); available at:

<http://www.leginfo.ca.gov/cgi-bin/calawquery?codesection=wic&codebody=&hits=20>.

²⁴ The Child Care and Development Services Act is comprised of Educ. Code §§8200-8498.

²⁵ Educ. Code §§8235-8239.

General Child Care and Development Programs,²⁶ Article 8.5 contains rules for Family Child Care Home Education Networks;²⁷ Article 3 is focused on Alternative Payment Programs,²⁸ and Article 11 addresses Reimbursement Rates.²⁹ Several of the most important provisions governing all forms of state-subsidized care can be found in Article 10,³⁰ which addresses administration of the programs. Provisions of Article 10 provide authority to CDD to adopt regulations addressing a wide variety of ECE program structure and implementation elements. These are discussed in greater detail in the final section of this memo on Statutory Flexibility, below.

The California legislature grants authority to state executive administrative agencies to implement the legislative mandates set forth in the statutes. The two state administrative agencies with responsibility for California's ECE programs are the Department of Education Child Development Division (CDE/CDD)³¹ and the Department of Social Services (DSS).³² In administering ECE, child care licensing and the CalWORKs program, both CDE/CDD and DSS promulgate regulations that contain definitions, requirements, restrictions and other elements necessary for the implementation of these legislatively mandated programs. The regulations promulgated by CDE/CDD and DSS, must be consistent with the authorizing statutes; otherwise, they will be held to have no legal effect. The state regulations development process requires CDE/CDD and DSS to provide an opportunity for public comment on proposed regulations before the regulations are finalized and legally enforceable. Legislative action is not required for CDE/CDD to alter its regulations; the department may amend, expand, revise, or rescind its regulations at any time so long as the agency goes through the required administrative process,³³ and so long as the amended or revised regulations are also consistent with the statute.

The state administrative agency regulations that control California's child development programs are found in Title 5 of the California Code of Regulations³⁴ (programmatic regulations promulgated by CDE/CDD), Title 22 of the California Code of Regulations (DSS

²⁶ Educ. Code §§8240-8244.

²⁷ Educ. Code §§8245-8247.

²⁸ Educ. Code §§8220-8227.

²⁹ Educ. Code §§8265-8272.

³⁰ Educ. Code §§8255-8264.8.

³¹ California Department of Education, Child Development Division website: <http://www.CDE/CDD.ca.gov/sp/cd/>.

³² California Department of Social Services, Community Care Licensing Division website: <http://cclcd.ca.gov/>; Welfare-to-Work Division website: <http://www.dss.cahwnet.gov/cdssweb/PG138.htm>.

³³ State agencies are required to adopt regulations following the procedures established in the Administrative Procedure Act (APA). A regulation is defined in Government Code section 11342.600: "Regulation means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure." If a state agency issues, enforces, or attempts to enforce a rule without following the APA, the rule is called an "underground regulation." State agencies are prohibited from enforcing underground regulations.

³⁴ California Code of Regulations, Title 5, available at: <http://government.westlaw.com/linkedslice/default.asp?Action=TOC&RS=GVT1.0&VR=2.0&SP=CCR-1000>.

child care licensing regulations)³⁵, as well as the Eligibility and Assistance Standards portion of the Manual of Policies and Procedures (DSS regulations that govern the CalWORKs Stage 1 child care program).³⁶ These regulations, and the ways in which they may facilitate or create barriers to blending and braiding programs, will be discussed in far greater detail in a subsequent memo.

In Educ. Code §8261(d), the legislature has articulated, the hierarchy of authority that exists between federal and state law. Section §8261(d) directs CDE/CDD to administer programs receiving CCDF funds in accordance with California's Title 5 regulations unless provisions of the regulations conflict with federal regulations. In situations where federal and state law conflict, the general rule is that federal law takes precedence.³⁷

All of these levels of state law – constitution, statutes, regulations – provide legal authority for government actions. Beyond these legally binding requirements, administrative agencies often publish “subregulatory” materials which the agencies use to provide more detailed descriptions of the programs’ rules. CDE/CDD issues a wide variety of subregulatory materials concerning child development programs: Management Bulletins³⁸, Desired Results Program Evaluation Materials and Forms,³⁹ the Manual of Attendance and Fiscal Reporting & Reimbursement Procedures (the “Green Book”),⁴⁰ Training and Monitoring Resource Guide,⁴¹ and many others. DSS similarly has numerous subregulatory materials. DSS has compiled an extensive Child Care Licensing Evaluator Manual,⁴² and issues All County Letters⁴³ and All County Information Notices⁴⁴ regarding the CalWORKs Stage 1 child care program. All forms of subregulatory materials are published by the administrative agencies without an opportunity for public input. They do not provide legal authority to the agency; subregulatory materials are valid only to the extent they are consistent with the statutes and regulations which they purport to construe. In addition to the subregulatory materials noted above, CDE/CDD uses Funding Terms & Conditions (FT&Cs) to define its contractual relationships with the local public and

³⁵ California Code of Regulations, Title 22, available at:

<http://weblinks.westlaw.com/toc/default.aspx?Abbr=ca%2Dadc&AP=CAT22&ItemKey=CAT22&RP=%2Ftoc%2Fdefault%2Ewl&Service=TOC&RS=WEBL7.11&VR=2.0&SPa=CCR-1000&fragment#CAT22>.

³⁶ Manual of Policies and Procedures, Eligibility and Assistance Standards Manual, available at:

<http://www.dss.cahwnet.gov/ord/PG302.htm>.

³⁷ Educ. Code §8261(d) (1): “Child care and development programs operated under contract from funds made available pursuant to the federal Child Care and Development Fund, shall be administered according to Division 19 (commencing with Section 17906) of Chapter 1 of Title 5 of the California Code of Regulations, unless provisions of these regulations conflict with federal regulations. **If state and federal regulations conflict, the federal regulations shall apply unless a waiver of federal regulations is authorized.**” (emphasis added)

³⁸ A complete listing of Management Bulletins beginning with calendar year 2000 are available on the CDE/CDD website at: <http://www.CDE/CDD.ca.gov/sp/cd/ci/allmbs.asp>.

³⁹ Desired Results is a comprehensive program evaluation system designed to measure CDE/CDD funded child development contractor effectiveness; available at: <http://www.CDE/CDD.ca.gov/sp/cd/ci/drdpforms.asp>.

⁴⁰ An 80-page CDE/CDD manual explaining attendance and fiscal reporting and reimbursement procedures; available at: <http://www.CDE/CDD.ca.gov/fg/aa/cd/documents/greenbook07.doc>.

⁴¹ Training and Monitoring Resource Guide, available at:

<http://www.CDE/CDD.ca.gov/sp/cd/ci/documents/tmrg07.doc>.

⁴² Available on the Community Care Licensing Division website at: <http://cclcd.ca.gov/PG395.htm>.

⁴³ Available on the DSS website at: <http://www.dss.cahwnet.gov/lettersnotices/PG931.htm>.

⁴⁴ Available on the DSS website at: <http://www.dss.cahwnet.gov/lettersnotices/PG1011.htm>.

private agencies that provide child care and development services.⁴⁵ While the FT&Cs are legally binding on contractors, and the programmatic provisions in these contracts generally reiterate the regulatory requirements, the legal effect of any FT&C provisions that differ from the regulations is open to question.

STATUTORY FLEXIBILITY GRANTED TO CDE/CDD FOR CHILD DEVELOPMENT PROGRAM ADMINISTRATION

Since administrative agency regulations are intended to implement legislative intent, their content must be consistent with the authorizing statute. However, authorizing statutes are often very broad, providing executive agencies with a great deal of latitude in administering programs. As noted above, the Education Code sections addressing child care and development program administration provide authority to CDD to adopt regulations addressing a wide variety of ECE program structure and implementation elements. For example, Education Code §8255(b)(1) states:

8255.

(b) It is the intent of the Legislature:

(1) That the State Department of Education develop clear, consistent, and appropriate regulations for child care and development programs to replace policy guidelines which are not subject to the public hearing process, often inconsistent, and without the force of law.

In §8255 (b)(1), the legislature gives CDE/CDD⁴⁶ authority and wide latitude to administer child care and development programs in any number of ways, all of which could be viewed as consistent with the legislative intent expressed in the authorizing statute. However, if the Legislature determines that more specific guidance regarding a particular aspect of program administration is needed, the legislature can enact a very detailed and directive statute that provides little interpretive leeway to the regulatory agency; CDE/CDD would be bound to follow that explicit legislative directive.

Many of the statutory provisions governing child development programs grant significant authority and flexibility to CDE/CDD in designing and administering ECE programs. Education Code §8261 provides statutory authority for many of the most important regulations

⁴⁵ CDE/CDD uses fifteen different FT&Cs to contract for child development services. There are separate FT&Cs for part-day and full-day State Preschool, part-day, full-day and support services under the Prekindergarten and Family Literacy programs, for Center-Based programs and Family Child Care Home Education Networks, for CalWORKs Child Care Stage 2 and Stage 3, for Migrant Center-Based and Migrant Alternative Payment programs, as well as FT&Cs for Extended Day Care (Latchkey), Handicapped, Alternative Payment, and Resource & Referral programs. In addition, CDE issues seven different types of Quality (Support) contracts. All FT&Cs for FY2007-2008 are available on the CDE/CDD website at: <http://www.CDE/CDD.ca.gov/fg/aa/cd/ftc2007.asp>.

⁴⁶ California statutes often provide regulatory authority specifically to the Superintendent of Public Instruction, an elected official who heads the State Department of Education; in statutes providing authority to the Department of Education, “the Department” and “the Superintendent” appear to be used interchangeably.

addressing administration of child development programs. Section 8261 is quite broad in its directive to CDE/CDD, and states in relevant part:

8261. (a) The Superintendent of Public Instruction shall adopt rules and regulations pursuant to this chapter. The rules and regulations shall include, but not be limited to, provisions which do all of the following:

- (1) Provide clear guidelines for the selection of agencies when child development contracts are let...
- (2) Provide for a contract monitoring system to ensure that agencies expend funds received pursuant to this chapter in accordance with the provisions of their contracts.
- (3) Specify adequate standards of agency performance.
- (4) Establish reporting requirements for service reports...
- (5) Specify standards for withholding payments to agencies that fail to submit required fiscal reports.
- (6) Set forth standards for department site visits to contracting agencies...

Education Code §8263 is an example of a far more explicit statutory provision which sets forth detailed eligibility requirements and enrollment priorities for families who are recipients of child care and development subsidies. Even though the statute is quite prescriptive, subsection (b)(3) nevertheless provides the Department with broad authority to set criteria for and grant waivers of the statutory eligibility priorities for agencies that wish to serve specific populations.⁴⁷

Education Code §8264.7, a provision specific to center-based child care and development programs, grants CDE/CDD broad authority in establishing rules and regulations for staffing.⁴⁸ Similarly, Education Code §8265 provides CDE/CDD with authority to promulgate regulations establishing reasonable standards and assigned reimbursement rates for contractors, although the Department is required to submit the standards and rates to the Joint Legislative Budget Committee.⁴⁹ This section also allows CDE/CDD to establish any regulations deemed “advisable” concerning conditions of service and hours of enrollment for children in child development programs. Education Code §8269 authorizes the Department to regulate the required funding and reimbursement procedures.⁵⁰

⁴⁷ Educ. Code §8263(b)(3).

⁴⁸ Educ. Code §8264.7: “The Superintendent of Public Instruction shall establish rules and regulations for the staffing of all center-based child care and development programs under contract with the department.”

⁴⁹ Educ. Code. §8265(a): “The Superintendent of Public Instruction shall implement a plan that establishes reasonable standards and assigned reimbursement rates, which vary with the length of the program year and the hours of service.

...
The reimbursement system, including standards and rates, shall be submitted to the Joint Legislative Budget Committee.

...
The Superintendent of Public Instruction may establish any regulations he or she deems advisable concerning conditions of service and hours of enrollment for children in the programs.

⁵⁰ Educ. Code §8269. The Superintendent of Public Instruction shall adopt rules, regulations, and guidelines to facilitate the funding and reimbursement procedures required by this chapter.

While all of the statutory sections noted above provide CDE/CDD with authority to design child development programs in ways that can promote increased collaboration to provide full-day/full-year and wrap-around care, Education Code §8264.5⁵¹ may be the statute which best demonstrates the legislature's willingness to provide CDE/CDD with flexibility in program administration. In §8264.5, the legislature has granted the Department authority to waive or modify requirements in order to enable child development programs to serve combinations of eligible children in areas of low population. The child development programs for which the superintendent is permitted to grant waivers includes, but is not limited to, State Preschool programs, child care provided by the California School Age Families Education Program, infant care and development services, migrant child care and development programs, campus child care and development programs, and general child care and development programs.

If it chose to do so, the legislature could expand this authority to CDE/CDD to waive or modify such requirements whenever circumstances require, not just in areas of low population. This increased flexibility could allow for the blending and braiding of programs in any instance in which it would enable programs to more effectively and efficiently serve eligible children and their families. In assessing the value of expanding CDE/CDD's authority, it would be useful to determine whether, how often, and under what circumstances the Department has granted such waivers under the current authority of §8264.5, whether there have been barriers for programs in requesting waivers or in the granting of waivers, and whether there have been problems in program administration when CDE/CDD has granted a waiver.

CONCLUSION

Although the federal and state legal frameworks for publicly-funded child development programs are complex, it is important to analyze the layers of authority. It is encouraging to realize that CDE/CDD, the state agency charged with administering California's wide array of ECE programs, has broad authority and flexibility both from the federal government in administering CCDF funds, and from the legislature with respect to administration of state-funded programs. This memo is a very preliminary analysis, but it appears that many of the changes needed in order to successfully "blend and braid" programs can be effectuated through CDE/CDD regulatory changes without a need for waiver requests to DHHS/ACF or state legislative action. It is also encouraging to recognize that the legislature has already given CDE/CDD authority to modify statutory requirements under certain circumstances in order to allow programs to more efficiently serve children. The legislature may well be willing to expand this authority in response to compelling arguments from advocates on cost-effective ways to address preschool children's need for full-day/full-year and wraparound care.

⁵¹ Educ. Code §8264.5. The Superintendent of Public Instruction may waive or modify child development requirements in order to enable child development programs to serve combinations of eligible children in areas of low population. The child development programs for which the superintendent may grant waivers shall include, but need not be limited to, state preschool programs, child care provided by the California School Age Families Education Program (Article 7.1 (commencing with Section 54740) of Chapter 9 of Part 29), infant care and development services, migrant child care and development programs, campus child care and development programs, and general child care and development programs.