



# CHILD CARE LAW CENTER

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TO: Preschool Advocates

FROM: Ed Bolen, Staff Attorney/Senior Policy Analyst

RE: **Analysis of Title 22 and Title 5 Regulations Affecting Preschool Programs**

## *INTRODUCTION*

California requires most child care centers and family child care homes, to be licensed by the California Department of Social Services under Title 22 of the California Code of Regulations. Some types of programs are exempt from licensure, including parent-run cooperatives and programs operated for limited times by local Park and Recreation departments. These licensed programs can serve children of preschool age, and may describe themselves as preschools. Title 22 does not define a category of licensure as preschool.

The California Department of Education, Child Development Division (CDD) provides funding for a variety of child care and early education programs, through contracts with centers and family child care home networks as well as family vouchers. Certain characteristics of these programs, such as eligibility requirements, staff qualifications and ratios, are regulated by Title 5 of the California Code of Regulations. Centers with contracts to operate CDD funded programs are often referred to as “Title 5 contracted centers” or, as used in this memo, “Title 5 centers.” There are two programs funded through CDD that are defined and classified as preschool: State Preschool, and the Prekindergarten and Family Literacy Program (PFLP). These programs are therefore both licensed under Title 22 and regulated by Title 5.

Many child care centers operate a mix of programs, serve a range of children of different ages, and fund their programs from a variety of sources. It is not uncommon to have a center with a state contract for State Preschool that operates as a Title 22 center for preschool age children during the time State Preschool is not offered. PFLP is designed as a part-day program with some funds available to provide a full day of care, while State Preschool is predominantly part-day with a small full-day component. Thus at different times of the day, and in different classrooms, different regulatory standards apply.

This memo examines conflicts or tensions between the two regulatory schemes that Title 5 centers with preschool programs must comply with. The focus is on differences in program operation and services provided, not differences in eligibility, program reimbursement or administration. Head Start programs operating in California must meet federal Head Start standards (as well as Title 22 licensing requirements if applicable) but are not addressed here.

### *DEFINITION OF PRESCHOOL CHILD*

One of the threshold challenges in meeting both Title 5 and Title 22 requirements for preschool programs is the difference in definitions of preschool child.

Title 5 sets staffing ratios (discussed below) based on the age group of children. A preschool child is defined as between thirty six months old and kindergarten age.<sup>1</sup> Title 22 has no direct age category for “preschool age children” but the Health and Safety Code defines them as children who are enrolled in a child day care center licensed by the department and who are not enrolled in either an infant care center or a schoolage child day care center.<sup>2</sup>

The state preschool program, also found in Title 5, has yet another age-based eligibility standard for program eligibility. State funded preschool programs must prioritize service for four-year olds, who have their four year birthday on or before December 2 of the year in which the child is enrolled in preschool.<sup>3</sup> Once all children in this category are served, a program can enroll three-year old children, defined as those children who will have their third birthday on or before December 2 of the fiscal year in which they are enrolled in a state preschool program.<sup>4</sup>

Title 5 defines infants as birth to eighteen months old and toddlers as between eighteen months and thirty six months old.<sup>5</sup> Title 22 considers infants as children birth to two years old.<sup>6</sup>

Centers face challenges when they serve a range of children, using different rooms and staff for different age groups. Title 22 regulations provide guidance for this common scenario, but adding the age groupings that come with Title 5 funding and programs complicates the ability of a program to maintain full enrollment and meet the needs of enrolled families. Staffing requirements and ratios, discussed below, are also different and introduce additional complexity.

### *STAFFING RATIOS*

Perhaps the starkest regulatory difference between Title 22 and Title 5 can be found in the staffing requirements. Both Title 5 and Title 22 require programs to meet certain ratios of adults to children, but the requirements are not the same.

Title 5 child development programs serving preschool age children must have one teacher for every twenty four children and one staff person for every eight children. On the other hand, Title 22 requires programs serving preschool children must have one teacher for every fifteen children and one staff for every twelve.<sup>7</sup> The law permits a teacher and an additional staff

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<sup>1</sup> 5 CCR § 1820(c).

<sup>2</sup> Cal. Health and Safety Code § 1597.059(b).

<sup>3</sup> Cal. Educ. Code § 8236.

<sup>4</sup> Cal. Educ. Code § 8236.

<sup>5</sup> 5 CCR 18290(a), (b).

<sup>6</sup> 22 CCR §

<sup>7</sup> 5 CCR § 101216.

person to supervise eighteen children if the additional staff person is an aide who is enrolled in at least 2 ECE units per semester until six units have been completed.<sup>8</sup> Title 22 exempts programs funded by the CDE and operating under Title 5 from the teacher-child ratios of Title 22, and requires them to follow the Title 5 staffing ratios.<sup>9</sup> Centers offering multiple programs can only exempt the Title 5 classrooms from the Title 22 regulations.

Differences in staffing ratios for different age groups exist for younger and older children as well. For example, Title 5 programs serving infants must have a teacher to child ratio of 1:19 and a staff to child ratio of 1:3. Title 22, on the other hand, requires infant programs to have one teacher for every twelve children, with one staff person for every four children.<sup>10</sup> Title 5 programs serving toddlers must have one teacher for every sixteen children and one staff person for every four children, while Title 22 requires one teacher for every 12 children or one teacher and one aide for every fifteen children.<sup>11</sup> Both Title 5 and Title 22 have regulations governing school-age programs.<sup>12</sup>

These differences become important when programs operate classrooms for a range of age groups, blend programs during the course of a day and/or use a mix of funding sources. Acknowledging that licensees serve children of a variety of ages, Title 22 contains additional ratio, group size and separate space requirements for programs serving preschool-age children that have a special program component for children between the ages of 18 months and 30 months that allows for some mixed age-group settings.<sup>13</sup> Maintaining proper age groupings and keeping programs adequately staffed with qualified reliable professionals is needlessly complicated by the different classifications of children by age as outlined above.

#### *STAFF QUALIFICATIONS*

Staff qualifications also differ between regulatory regimes. Both Title 22 and Title 5 provide qualification requirements for different job roles. Title 22 contains specific qualifications; Title 5 regulations require most staff to meet credential standards set by the Commission on Teacher Credentialing. Title 5 requirements are more demanding than Title 22. For example, associate teachers in a Title 5 program must meet essentially the same requirements as a lead teacher in a Title 22 program. All staff of all licensed programs must meet basic criminal background clearances defined in Title 22 and minimal additional requirements.<sup>14</sup>

Title 22 does not impose any educational requirements for assistant teachers; assistant teachers at Title 5 contracted centers must have 6 units of early childhood education or child

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<sup>8</sup> 5 CCR § 101216(b).

<sup>9</sup> 5 CCR § 101216.3(c).

<sup>10</sup> 22 CCR § 101416.5(b).

<sup>11</sup> 5 CCR § 18290(b) and 22 CCR § 101216.3(a),(b).

<sup>12</sup> See 5 CCR § 18204 for Title 5 requirements and 22 CCR § 101516.5 for Title 22. There are also separate staff qualification requirements.

<sup>13</sup> See 22 CCR § 101216.4, the Preschool Program with Toddler Component.

<sup>14</sup> 22 CCR § 10170.

development at the college level.<sup>15</sup> The permit is good for five years. Renewal requires 105 hours of professional growth.<sup>16</sup>

Title 5 programs may employ associate teachers, a classification not made in Title 22 regulations. This requires 12 units of child development or early childhood education at the college level and at least 50 days of experience in a child care and development program.<sup>17</sup> In order to renew the permit, the applicant must have at least 15 qualifying semester units for the Child Development Teacher Permit.<sup>18</sup>

Teachers are required to have 12 units of child development or early childhood education and six months experience to work at a Title 22 centers. Title 5 requires 24 units and 16 additional units of general education credits.

Keep in mind that there are no requirements for staff qualifications and education in Title 22 for family child care homes, aside from criminal clearances and basic health and safety training.

#### *PROGRAM CONTENT*

State preschool and PKFL must provide a program with educational content that is developmentally, linguistically and culturally appropriate, includes children with special needs, supports social and emotional development and provides for physical, cognitive and language skills.<sup>19</sup> Title 5 programs must include a health and social services component that identifies a child and family's needs, provider's referrals and monitors follow up.<sup>20</sup> There are no similar requirements for Title 22 programs.

#### *PROGRAM RATING*

All licensed programs must meet the requirements in Title 22. All Title 5 programs are necessarily governed by Title 22 even if they are otherwise exempt from licensure.<sup>21</sup> The licensing regulations offer a minimal level of safety and program quality, and are monitored by infrequent random visits (as well as investigations of legitimate complaints) by Department of Social Services staff. Title 5 programs have additional rating and monitoring requirements. These programs receive compliance reviews from CDE staff at least once every three years.<sup>22</sup> In addition, Title 5 programs must conduct an annual self-evaluation process, which includes parental assessment, analysis of the CDE compliance review, and development of an

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<sup>15</sup> 5 CCR § 80110(a).

<sup>16</sup> 5 CCR § 80110(c)(3).

<sup>17</sup> 5 CCR § 80111(a). There are alternative means of meeting this educational requirement.

<sup>18</sup> 5 CCR § 80111(c).

<sup>19</sup> 5 CCR § 18273

<sup>20</sup> 5 CCR § 18276.

<sup>21</sup> 5 CCR § 18020

<sup>22</sup> 5 CCR § 18023.

improvement plan.<sup>23</sup> Finally, Title 5 center-based programs and family child care home networks must complete an environment rating each year.<sup>24</sup>

#### *CHILD ASSESSMENTS*

Title 22 does not require any individual child assessments, though many programs may conduct periodic assessments as part of their program services, and other statutory assessments are required (such as assessing the needs of a child with a disability as required by the Americans with Disabilities Act). Title 5 centers must conduct a developmental profile, using the age-appropriate Desired Results Developmental Profile for all children enrolled at least 10 hours per week.<sup>25</sup> The profile must be completed at least every six months and be used to plan developmentally appropriate activities.<sup>26</sup> Though, as noted above, laws protecting children with disabilities require assessments, Title 5 explicitly requires the Desired Results Development Profile to include any necessary accommodations and adaptations for children with disabilities and/or Individualized Education Plans.<sup>27</sup>

#### *PARENTAL INVOLVEMENT*

Title 5 programs are required to include a parent involvement and education component, including at least two parent conferences per year and a Parent Advisory Committee.<sup>28</sup> Parents must also be surveyed each year as part of the Desired Results Developmental Profiles and the program's self-evaluation process.<sup>29</sup> Title 22 does not have any requirements for parental involvement.

#### *STAFF DEVELOPMENT*

Title 5 contractors must have a staff development program including an annual written performance evaluation.<sup>30</sup> Title 22 contains no requirements for staff development.

#### *CHILDREN WITH SPECIAL NEEDS*

As noted in several parts of this memo, Title 5 requirements include specific references to serving children with special needs. In general, the regulations do not add new requirements or raise the standards at which a program must operate, but make explicit how programs must accommodate the needs of children with special needs in order to meet their obligations under federal and state disability law. Title 5 programs must keep documentation of a child's exceptional needs on file, and incorporate any necessary accommodations in the child's developmental profile. Title 22 requires certain health information to be kept on file, including

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<sup>23</sup> 5 CCR § 18279.

<sup>24</sup> 5 CCR § 18281.

<sup>25</sup> 5 CCR § 18272(a).

<sup>26</sup> 5 CCR§ 18272(b) and (c).

<sup>27</sup> 5 CCR § 18272(d)

<sup>28</sup> 5 CCR § 18275.

<sup>29</sup> 5 CCR § 18280.

<sup>30</sup> 5 CCR § 18274.

“identification of the child’s special problems and needs” but does not explicitly reference disabilities and accommodation.<sup>31</sup>

#### *LANGUAGE ACCESS*

The goals and objectives required to be developed by Title 5 programs must reflect the cultural and linguistic characteristics of the families served by the program.<sup>32</sup> These goal and objectives must incorporate the requirements contained in the chapter. The education program requirements in §18273 of Title 5 must also be linguistically and culturally appropriate.<sup>33</sup> Statutory and regulatory requirements touching on language access will be addressed in greater detail in a future CCLC legal memo.

#### *CONCLUSION*

Preschool programs have evolved and grown in response to the demands of families, research on the benefits of high quality preschool and political will. As they have grown, the requirement and monitoring have developed into a complex web of statutes, regulations and other directives. As California attempts to improve the quality of all programs, blend and integrate funding and achieve greater flexibility and efficiency, change will require a number of different strategies ranging from changing regulations and credentialing requirements to statutory revision. While in many cases it may be possible to remove conflicts, the differing history and structure of the various early care and education programs must also be examined. Appropriate funding, state infrastructure, support systems and oversight must accompany all modifications to existing requirements.

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<sup>31</sup> 22 CCR § 101220b)(3).

<sup>32</sup> 5 CCR § 18271(c).

<sup>33</sup> 5 CCR § 18273(a)(1).