



CHILD CARE LAW CENTER

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DATE: January 22, 2009
TO: Preschool Advocates
FROM: Claire Ramsey, Staff Attorney
RE: Transitions into preschool for children with disabilities

Introduction

Three years old is a year of transition for children with disabilities in California. From birth until age three, children who receive services because of their disabilities do so under the Early Start program. Early Start is California's early intervention program, and in 2007 it served over 29,000 infants and toddlers.¹ The Department of Developmental Services is the agency in California overseeing Early Start, although some children with disabilities are served through the Department of Education from birth. At three years old, children age out of early intervention services and as preschoolers, their right to services changes.

These changes occur because they are mandated by two different sets of laws. One, the Individuals with Disabilities Education Act (IDEA), is a federal law that mandates early intervention and special education services for qualifying children. Part C of the IDEA regulates programs and services for children with disabilities from birth to age three. After the age of three, educational services are governed by Part B of the IDEA. Children who have

¹ Department of Developmental Services, Fact Book, 11th Edition, October 2008.

received services under Part C will transition to Part B if they qualify. In California, over 17,000 children transitioned from Part C to Part B in 2007.²

Another law, the Lanterman Developmental Disabilities Services Act, sets up a statewide network of regional centers which serves clients with developmental disabilities and contracts for needed services to help these individuals “approximate the pattern of everyday living available to people without disabilities of the same age.”³ To qualify, these children have to have one of five conditions—autism, cerebral palsy, epilepsy, mental retardation or a condition that requires services similar to mental retardation, the age of onset must be before 18, and that condition must constitute a substantial disability.⁴ Children who are regional center clients past the age of three will remain regional center clients for life.

This memo will first give a brief overview of Part C of the IDEA. It will then examine the transition that children entering preschool make out of Part C early intervention services into Part B educational services and regional center services.

Overview of Part C

One of the purposes of the IDEA is to “assist States in the implementation of a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services for infants and toddlers with disabilities and their families.”⁵ In California, early intervention services, known as Early Start, are largely administered by the Department of Developmental Services, although the Department of Education handles low

² Data Accountability Center, Individuals with Disabilities Education Act (IDEA) Data (visited January 14, 2009) <https://www.ideadata.org/TABLES21ST/AR_8-7.htm>

³ Cal. Welf. & Inst. Code § 4501

⁴ Cal. Code Regs. Tit. 17, §54000 (2008). Note that the law changed in March 2004 to make the term substantial disability less open to interpretation and more consistent with federal limitations.

⁵ 20 U.S.C. § 1400(d)(2) (2008).

incidence disabilities from birth. Low incidence disabilities include severe hearing and vision impairments.⁶

Children, birth to three, are eligible for early intervention services if they meet one of three criteria: (1) the child has a developmental delay, or (2) the child has an established risk condition, or (3) the child has a high risk for developmental delay.⁷ A developmental delay exists if there is a significant difference between the current level of functioning of the child and the expected level of development for his or her age.⁸ This delay must exist in at least one developmental area—cognitive, physical, communication, social, emotional or adaptive.⁹ An “established risk condition” exists when the infant or toddler has a condition that has a high probability of resulting in a developmental delay or a low incidence disability.¹⁰ A “high risk of a developmental delay” exists when a child has a combination of factors that require intervention.¹¹

Once an infant or toddler is determined to be eligible for early intervention services, a regional center or local educational agency (LEA) will ensure that an individualized family service plan (IFSP) is developed.¹² Each IFSP must contain a number of different components.¹³ It will include a statement about the child’s current level of functioning as well as a statement of developmental outcomes.¹⁴ It must also contain a statement of the specific early intervention services needed to aid the child in meeting the stated outcomes.¹⁵ Early interventions services must be provided in the infant or toddler’s natural environments which

⁶ Cal. Code Regs. Tit. 17, §52000(b)(32) (2008).

⁷ Cal. Code Regs. Tit. 17, § 52022 (2008).

⁸ Cal. Code Regs. Tit. 17, § 52022(a) (2008).

⁹ *Id.*

¹⁰ Cal. Code Regs. Tit. 17 § 52022(b) (2008).

¹¹ Cal. Code Regs. Tit. 17, § 52022(c) (2008).

¹² Cal. Code Regs. Tit. 17, § 52100(2008).

¹³ Cal. Code Regs. Tit. 17 § 52106 (2008).

¹⁴ *Id.*

¹⁵ *Id.*

can include home, child care or a school program.¹⁶ If services cannot be provided in a natural environment, the IFSP must contain an explanation of why.¹⁷

Regional centers and local educational agencies are also charged with proactively looking for children who have a developmental disability or who are at risk of one. This service known as “Child Find” requires the agencies to conduct activities to “locate all infants and toddlers who may be eligible for early intervention services.”¹⁸ These Child Find activities can include a wide range of approaches including coordinating with hospitals, contacting parent organizations, community distribution of materials and offering community-wide health and developmental screenings.¹⁹

It is important to note that all children who are abused or neglected must, at minimum, receive a developmental screening under the federal Child Abuse and Prevention and Treatment Act (CAPTA).²⁰ CAPTA requires the Department of Developmental Services to collaborate with each county to determine the provisions and procedures to help ensure children who may be eligible for Early Start are referred. These screenings act as a gateway and allow the counties to assess whether a child should be referred on for a more thorough evaluation to see if they will qualify for early intervention services. Each county has discretion in setting up its program to ensure that the program works for the particular community or population. Under CAPTA, each county also has the option to bypass the screening process and simply refer children directly for evaluation and assessment.²¹

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Cal. Code Regs. Tit. 17§ 52040 (2008).

¹⁹ *Id.*

²⁰ 42 U.S.C § 5101 et seq. (2008).

²¹ *Id.*

Transition out of Part C for Preschool-Aged Children

At age three children will transition out of Early Start. There are three possible courses for this transition. First, a child can no longer qualify for services. This is possible both because the legal requirements for eligibility change when a child turns three and because a child who was at risk for a developmental disability may no longer be delayed. In 2006, approximately 5,300 children exited Part C and were not eligible for Part B.²² The Early Start service coordinator is still required to hold a transition IFSP meeting at which time the coordinator can provide the parent with information about community resources including preschool.²³

The second possibility is that a child is eligible for special education services under Part B of the IDEA. For most children with disabilities this is when they will transition between California's Early Start system, which is run by the regional centers, and the local educational agency that will provide educational services beginning with preschool. Many qualified children attend a special day class preschool, while others attend typical preschool programs and receive services as part of their new plan which is now called an Individualized Education Plan (IEP).

The state mandates a number of steps that must be taken to ensure a smooth transition between Part C and Part B of the IDEA. The transition planning process begins up to six months before the child turns three and begins with notification to both the parents and the LEA.²⁴ An IFSP meeting must take place at least three months before the child turns three.²⁵ This meeting will discuss next steps including what services the child will receive from the

²² Data Accountability Center, Individuals with Disabilities Education Act (IDEA) Data (visited January 14, 2009) <<https://www.ideadata.org>>

²³ Cal. Code Regs. Tit. 17, §52112(c) (2008).

²⁴ Cal. Code Regs. Tit. 17, § 52112 (2008).

²⁵ *Id.*

LEA.²⁶ At this time, the focus of the services will change from early intervention and family support to a child's educational needs. A child, therefore, will be referred for a new evaluation and assessments by the LEA.²⁷

These laws, however, do not always mean that an individual family experiences a painless transition into preschool services. One of the most complicated points about transition can be timing. Early Start services are year round, but preschool services offered under Part B follow the school year. LEAs are not required to offer evaluations, assessments or services during school breaks.²⁸ This means that during the three months of summer, LEAs are not required to work on transition plans or other related matters. The law foresees this possibility and requires the Early Start service coordinator to begin the transition process early enough so that a child with a birthday over the summer break is not forced to wait until fall. A regional center also has discretion to continue providing services for an eligible preschooler "until the beginning of the next school term after the toddler's third birthday . . . when the LEA special education program is not in session" and the IFSP team determines that services are necessary during the interim period.²⁹ It should be noted, however, that a relatively small number of children remain in Part C past the age of three.³⁰ Furthermore, it is not clear that these transitions always work as seamlessly as the law envisions. This is unfortunate because a gap in service at age three can mean that a child may have made developmental gains in his or her early intervention program that may be lost by delays in preschool services.

It is also possible that a child will remain a regional center client. In California, the Lanterman Developmental Disabilities Service Act governs the provision of services for these

²⁶ Cal. Code Regs. Tit. 17, § 52112(c) (2008).

²⁷ Cal. Code Regs. Tit. 17, § 52112(d)(4) (2008).

²⁸ Cal. Educ. Code § 56302.1

²⁹ Cal. Code Regs. Tit. 17, § 52112(f) (2008).

³⁰ Department of Developmental Services, Monthly Consumer Caseload Report, December 2008.

children. There is federal law affecting these services as well, however, California has made two policy choices that greatly affect receipt of these services. First, California law has a narrower definition of developmental disability than the federal law. It is estimated that 661,107 California residents meet the federal definition of developmental disability, but under the more restrictive state definition, California serves just over 200,000 qualified individuals at the regional centers.³¹ Second, California law makes receipt of services by qualified individuals an entitlement.³² This goes farther than the federal law and it means that services are guaranteed for eligible regional center clients.

Children who qualify for regional center services past the age of three will get an individualized program plan (IPP) that will outline the services to be provided. The services that can be provided are much broader than what would be provided by the LEA and can focus on a number of different aspects of a person's life, not just education. At the transition IFSP meeting, the service coordinator is required to identify the person responsible for convening the IPP meeting.³³ As with the transition to Part B preschool services, the transition between Early Start services and regional center services during the preschool years is not always smooth. In fact, the State Council on Developmental Disabilities has found that there is a "gap in services and supports between the ages of three and five as families are caught between the Early Start and Regional Center systems."³⁴

Conclusion

Children with disabilities must contend with a number of transitions when they reach the age of three and are ready to enter preschool. Many of these children are entitled to

³¹ State Council on Developmental Disabilities State Plan 2007-11 at pg 19.

³² *Id.*

³³ Cal. Code Regs. Tit. 17, § 52112(d)(5)

³⁴ State Council on Developmental Disabilities State Plan 2007-11 at pg 28.

services under the law, but what services they are entitled to and how effectively the transition is made vary. This variance is caused in part because the administration of services is diffuse. Part B preschool services under the IDEA are administered by thousands of different LEAs throughout the state. Regional center services are administered through a statewide network of 21 different regional centers. It is important, however, that children do not have a delay in services as they transition. It has the potential to negatively affect both the progress they have already made in early intervention services and their ability to get the most out of their preschool experience.