

# Legal Update



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## *MAKING INCLUSION A PART OF PLANNING FOR UNIVERSAL PRESCHOOL*

Awareness of the importance of universal preschool is expanding dramatically. As education “reform” policies and particularly the federal No Child Left Behind law focus ever more attention on high-stakes testing of children as young as early elementary school, an understanding is growing among politicians and policymakers about the importance of early education and how the lack of early education contributes to disparities in school success among demographic groups.

Georgia, for example, has been a pioneer in expanding access to preschool. It initiated a voluntary pre-kindergarten program funded with lottery proceeds in 1993; some 70 percent of the state’s four-year-olds are enrolled<sup>1</sup> and the program has won wide praise. In January 2004, the Arkansas Senate overwhelmingly approved a preschool bill, with a \$40 million price tag to be met through new taxes, to serve 7,500 currently unserved poor children. In New Haven, Connecticut,

the school district has taken over six child care centers serving 150 children; the centers formerly were part of the city’s child development program. As a result, the school system now oversees the education of some children “virtually from birth through graduation.” And in December 2003, the National Governors Association held a “Governors’ Forum on Quality Preschool,” hosted by Florida’s Jeb Bush. Over two days members of the association heard presentations and roundtable discussions on such topics as “The Role of State Leaders in Promoting Quality Preschool,” “The Economic Development Case for Preschool,” “Preschool in an Era of Diversity,” “Defining the CEO’s Role in Promoting a Preschool Agenda,” and “Building a High-Quality Preschool Workforce.”

In California, even as the state faces huge budgetary shortfalls exacerbated by revenue reductions, universal preschool is being promoted on numerous fronts. Preschool California, funded by the David and Lucile Packard Foundation, is a broad-based, multi-year, non-partisan advocacy campaign to achieve voluntary preschool for all 4-year-olds in California. In addition to Preschool California, the Foundation also funds local flagships and a number of other organizations working to achieve preschool for all. California Assembly Bill 56 has been introduced to add a voluntary preschool program to

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the K-12 system as part of the state's K-12 master plan. The program would be available to three- and four-year-olds and would focus on preparing them for kindergarten. Several local efforts are also underway, including in Los Angeles, to develop preschool projects in conjunction with state efforts. Finally, California's First 5 Children and Families Commission is sponsoring pilot preschool projects to demonstrate the impact of school readiness and build support for offering preschool statewide.

One common thread among these proposals is recognition of the importance of preschool in narrowing the achievement gap between children from low-income families and those from wealthier families. This gap, which is apparent when children begin kindergarten, only grows as they progress through the K-12 system. Another shared feature among the proposals is an expression of strong commitment to including children with disabilities in preschool settings.

According to the First 5 Commission, California has approximately one million three- and four-year-olds who stand to benefit from these proposals. Estimates suggest that 5 to 7 percent of these children have disabilities.<sup>2</sup> Nationally, in 2000, 600,000 preschoolers received special education preschool services due to a disability.<sup>3</sup> These figures will only grow as more children, including children with disabilities, enroll in preschool.

Poverty and disability are likely to be linked. "Children in low-income families have a 40 percent higher risk of being disabled than their affluent peers,"<sup>4</sup> while a large proportion of children with disabilities and other special needs are in low-income families. In 1997-98, 41 percent of families with infants and toddlers who received early intervention services earned under \$25,000 annually, while 70 percent earned under \$50,000.<sup>5</sup> Sixteen percent of low-income families have a

child with a disability; 9 percent have a child with a severe disability – rates that are 50 percent higher than among wealthier families. Families who receive public assistance are even more likely to be affected – 20 percent have a child with a disability and 13 percent have a child with a severe disability.<sup>6</sup> Low-income children are more likely to have learning disabilities. Some 20 percent of children with family incomes below \$35,000 annually have learning disabilities, compared with 5.5 percent of children with family incomes over \$75,000 annually.<sup>7</sup>

Given the prevalence of disabilities among children in low-income families, and the compelling reasons to make preschool available to low-income children, it is essential that the issue of inclusion of all children be prominent in universal preschool efforts. Unfortunately, despite expressions of broad commitment to include them, the needs of children with disabilities can sometimes fall "off the radar screen" in actual planning and implementation discussions.

To address this potential problem, and to ensure that planning for preschool in California focuses not merely on the presence of children with disabilities in classrooms but on the children's full and active participation, in January 2004 the Child Care Law Center (CCLC), Children Now, and Preschool California convened a meeting of 20 advocates, many with direct experience in developing and implementing inclusive programs, to discuss the principles that should be an integral part of planning for a preschool-for-all system. These principles, in a slightly abridged format, are set forth below.

It is the participants' and conveners' intent that the principles be an initial step toward development of a coordinated approach to inclusion on the part of various preschool initiatives and a resource for state and local level planning. The group drew upon the

work of the Los Angeles Master Plan for Universal Preschool Special Needs Committee, in which CCLC participated. The group developed and agreed upon principles in several categories at the meeting and intends to do further work on additional important questions. Principles agreed upon are:

*An inclusive preschool program must regard and treat families as full partners.* It must:

- create and foster collaborative relationships between families and service providers to facilitate a streamlined process and delivery system.
- obtain express consent from parents for all services, assessments, and testing.
- educate consumers (parents and families) about their choices and their right to have their children fully included in their preferred program.
- offer families and children ongoing support and services.
- ensure that all families have access to many high quality options.
- ensure that families have access to knowledge of relevant laws and regulations.

*An inclusive preschool program must reach out affirmatively to connect with families.* It must:

- define "special needs" and "disability" broadly, so that all children receive the accommodations they need to be included successfully in preschool. Stringent eligibility criteria for "accommodations" should be avoided.
- make the program known to families with children with disabilities and other special needs, rather than waiting for families to seek services.
- make special efforts to reach the most vulnerable families, including those involved with the child welfare system, homeless families, and migrant and otherwise mobile families.
- address a wide range of needs for both the child and the family.

- be knowledgeable about and have connections to other service organizations.
- make inclusion principles and children with special needs part of all community outreach and media reports.

*To serve the entire community, an inclusive preschool program must understand the **importance of diversity** in all aspects of the organization.* It must:

- partner with parents in a linguistically and culturally sensitive manner and be cognizant of different cultures' varying views of disability.
- use culturally and linguistically appropriate tools for screening and assessment.
- recruit and maintain a workforce that reflects California's population and speaks the languages of children and their families.
- create a delivery system that is linguistically and culturally accessible and appropriate to all families.

*An effective **screening, assessment, and intervention system** must focus on early detection and intervention, considering children's needs at entry into the program and on an ongoing basis.* It must:

- identify any developmental delays as soon as possible.
- use high quality screening and assessment tools that have adequate sensitivity, specificity, validity, and reliability; have been standardized on diverse populations, and are developmentally appropriate.
- use an integrated screening and assessment system that includes preschool providers, parents, pediatricians, and other service and health professionals.
- assess children's progress in their current setting with existing supports; children should not have to "fail" before receiving services.
- include development of Individual-

ized Education Plans (IEPs) and Section 504 plans throughout the child's preschool experience in a way that allows for a smooth transition to kindergarten, with participation of appropriate family members and service providers.

*An inclusive preschool program must adopt a **curriculum** that is effective for all children.* The curriculum must:

- be age and developmentally appropriate.
- use accommodations and adaptations that will allow integration of children of varying abilities.
- embed inclusive practices.
- be flexible enough to accommodate children of varying needs.
- value individualized and differentiated instruction.

*Both construction and renovation of preschool **facilities** — both classrooms and playgrounds — must take inclusion principles into account; inclusion must not be an afterthought.* An inclusive preschool facility must:

- not only comply with the Americans with Disabilities Act but incorporate best practices for accessible facilities.
  - be accessible to children with varied disabilities and special needs.
- Every facility need not meet the needs of every child, but within each community the preschool system as a whole should meet every child's needs, and each child and family should have a choice of settings.
- make inclusion goals a priority in funding for development of facilities and renovation of existing facilities.

*An inclusive preschool **delivery system** must ensure that all the system's components and activities promote all children's successful inclusion.* The system must:

- integrate children into full-day, full-

year programs while maintaining the flexibility that children with disabilities may need.

- promote coordinated delivery of services and create a streamlined process that avoids forcing families to apply to multiple agencies to receive the services they need.
- make specialized services available in a way that is appropriate and convenient, e.g., ensure that services come to children rather than requiring children to travel to services.
- guarantee adult/child ratios in all programs that allow for inclusion of children of all abilities and needs.
- establish an oversight entity (either an individual or office) whose function is to help parents navigate the complex system of services for children with disabilities.
- minimize the number of transitions and settings the child experiences and the number of adults with whom the child must interact, while still meeting the family's needs for child care.
- formalize agreements between agencies (e.g., California Department of Education, resource & referral networks, family resource networks, special education providers, Special Education Local Planning Agencies, etc) to promote co-ownership of responsibility for meeting children's needs.
- integrate public and private programs at the management/administration level.
- anticipate barriers to inclusion and address them before they arise.
- address the particular challenges to programs in rural areas.

*An inclusive preschool program must recruit and retain a **workforce** with the capacity and qualifications to serve a broad range of children.* The program must:

- train its workforce in inclusion principles, relevant laws and regula-

tions, how to implement these laws and principles, and how to work productively with all the child's service providers.

- conduct joint (include "specialized" providers and parents together) and ongoing training in multiple settings for its entire workforce.
- train early childhood educators within the early intervention/special education system to work with the child's preschool provider in order to promote seamless transition to preschool.
- involve service providers and educators who work with children with special needs in planning preschool programs.
- place inclusion and disability specialists in leadership and administrative positions to foster institutionalization of policies to meet children's special needs.
- make ongoing support and joint training available for teachers, parents, and service providers to promote integration of all services and service providers into the preschool setting.
- make opportunities available for its workforce to strategize about the best ways to accommodate children with different abilities.
- ensure that its workforce has access to disability specialists, e.g., physical, occupational, and speech therapists and mental health care providers, and to ongoing technical assistance and support.
- include opportunities to specialize in inclusive services at all steps of the career ladder.
- offer training in multiple languages and prepare all providers to offer care that is culturally and linguistically appropriate for all children and families.

*An inclusive preschool program must have sufficient financing*

*in place to provide necessary services.* It must:

- establish a rate structure that recognizes the real cost of both high quality inclusive programs for all children and the special needs of particular children.
- blend funding streams creatively and appropriately to create a cost-efficient system that can meet each family's needs and maximize access for all families.
- leverage existing funds and explore new sources of funds.

*An inclusive preschool program must, on an ongoing basis, evaluate its success in meeting all children's needs.* It must:

- ensure that tools used to determine program quality or an individual child's progress include measures that determine whether its approach leads to the successful inclusion of all children.
- ensure that overall program funding and contract decisions are based on the evaluation of the program rather than the assessment of individual children.
- ensure that the result of program evaluation is not to limit access for families with children with disabilities.
- develop evaluation tools that are designed specifically for preschool programs.

High quality, inclusive child care is especially important for very young children because a well-designed program can offer the first opportunity for diagnosis of childhood disability. Such early diagnosis, if it is followed by appropriate services, can reduce the need for special education and related services later in the child's schooling.<sup>8</sup> Moreover, inclusive preschools have been shown to be of higher quality than programs that serve only children

with disabilities.<sup>9</sup> Finally, but not least, Section 619 of Part B of the Individuals with Disabilities Education Act (IDEA) requires that children between the ages of 3 and 5 be served in the least restrictive environment appropriate to their needs, which generally will be an inclusive preschool program. CCLC believes that the inclusive preschool programs that are currently being designed and implemented in California and other states will serve as nationwide models that will benefit all young children.

<sup>1</sup> According to the National Institute for Early Education Research, Georgia ranks highest in the nation in preschool enrollment. See [www.theweekly.com/news/2004/February/19/preschool.html](http://www.theweekly.com/news/2004/February/19/preschool.html).

<sup>2</sup> Marcia K. Meyers, *et al.*, *Expensive Children in Poor Families: The Intersection of Childhood Disabilities and Welfare* (Public Policy Institute of California 2000) at 15.

<sup>3</sup> U.S. Dep't of Education, *To Assure the Free Appropriate Public Education of All Children with Disabilities: Twenty-third Annual Report to Congress on the Individuals with Disabilities Education Act* (2001).

<sup>4</sup> Meyers, *supra* note 2.

<sup>5</sup> U.S. Dep't of Education, *supra* note 3.

<sup>6</sup> S. Lee *et al.*, *Disabilities Among Children and Mothers in Low-Income Families* (Institute for Women's Policy Research 2002).

<sup>7</sup> B. Bloom & L. Tonthat, *Summary Health Statistics for U.S. Children: National Health Interview Survey, 1997* (Vital Health Statistics, Series 10, No. 203, U.S. Gov't Printing Office 2002).

<sup>8</sup> See, e.g., C.L. Salisbury & B.J. Smith, *Effective Practices for Preparing Young Children with Disabilities for School* (ERIC Clearinghouse on Disabilities and Gifted Education 1993).

<sup>9</sup> Frank Porter Graham Child Development Center, "Pre-K for Children with Special Needs," *Early Developments* (2001).

## ***CALIF. SUPREME COURT RULES CHILD CARE CENTER NOT LIABLE FOR UNFORSEEABLE CRIMINAL ACT***

Should a child care center be held liable for the deaths of two children killed when a motorist intentionally drove through a chain link fence and onto the center's playground? In May the California Supreme Court ruled that when there had been no reports of prior similar acts, the motorist's crime was not foreseeable and neither the center nor the property owner was liable.<sup>1</sup>

The center leased property from a church located on a busy street corner. A four-foot chain link fence enclosed the playground. One day in the spring of 1999, the driver of a large Cadillac intentionally drove his car through the fence, onto the playground, and into a group of children. Two children were killed and several were injured. The motorist was convicted of first degree murder and was sentenced to life in prison without parole.

The parents of the children who were killed sued the child care center and church, claiming that the defendants knew that the fence did not provide adequate protection. They alleged that noninjury traffic accidents had happened in the vicinity, including a freak accident in which a mail truck with no driver careened through the fence and onto the playground. They said it was foreseeable that a car would go through the fence and strike children on the playground. The parents claimed that their children's lives could have been saved if a sturdier fence had been in place.

The defendants moved for summary judgment, contending that under an earlier California Supreme Court ruling<sup>2</sup> they could not be held liable for the results of an unforesee-

able criminal act. They said they knew of no prior similar acts that would have put them on notice of the need for greater security, and they noted that the fence met the code and safety regulations that were in effect when the crime occurred.

The trial court granted defendants' motion; it found that the parents did not present any evidence of prior similar incidents and thus did not show that the defendants owed them a duty to prevent what had happened. The court of appeals reversed, holding that it was foreseeable that a car might come through the fence accidentally, so that lack of a stronger fence was a legal cause of the children's deaths even though the incident that killed them was a crime.

The Supreme Court held that its

earlier decision in *Ann M.* required it to balance "the foreseeability of harm against the burden of the duty to be imposed." It said that the court of appeals, in rejecting defendants' motion to dismiss, "did not give due consideration to the *criminal* nature of [the] injury-producing act, and thus created a duty test that is far too broad ...." Under the appropriate balancing test the court concluded that "defendants owed no duty to plaintiffs because [the] brutal criminal act was unforeseeable." It reversed the court of appeals and affirmed the award of summary judgment to defendants.

<sup>1</sup> *Weiner v. Southcoast Childcare Centers*, S116358 (Calif. Sup. Ct. May 6, 2004).

<sup>2</sup> *Ann M. v. Pacific Plaza Shopping Center*, 6 Cal.4<sup>th</sup> 666 (1993).

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### ***SMALL TOWN JUSTICE***

*By Will Pittz*

*[Editor's note: This article is reprinted with permission from ColorLines magazine (www.colorlines.com), where it appeared in the Summer 2003 issue. It tells a disturbing tale of immigrant women in rural eastern Washington who offer subsidized child care and have been subjected to racial harassment and fraud charges by local authorities. The article on page 7 updates the status of legal proceedings against the child care providers.]*

For 70 days, steel bars and concrete separated former childcare provider Maria Rodriguez from her

children. Her eight-month-old baby girl didn't understand why her mother was gone. Her five-year-old daughter, who has Down's syndrome and relies on a pacemaker to regulate her erratic heartbeat, needed her mother to bring her to the medical clinic and care for her night and day. So, after the police handcuffed Rodriguez and dragged her to the county jail, she longed for nothing more than to repeat her crime.

Rodriguez is one of 46 Latina childcare providers in the small migrant town of Mattawa, WA, where caring for children has become a criminal offense. Since May 2002, fraud investigators at the state Department of Social and Health

Services (DSHS) have accused Rodriguez and other state-licensed daycare providers of receiving \$2 million in fraudulent payments from the state. Newspapers and television stations have vilified the daycare workers. Mattawa's mayor suggested they were at least partially to blame for the state's billion-dollar budget deficit, saying to one reporter, "You know, if Governor Locke is losing a billion dollars a year, hey, I think we might know where some of it's at."

Rodriguez, who was locked behind bars on August 20, 2003 on a charge of first degree theft, was exonerated 70 days later after an independent investigation determined her innocence. Three months earlier, John Bumford, director of DSHS's Division of Fraud Investigation, had admitted that allegations of fraud were false. Yet the state and county continue to pursue charges against the daycare providers.

One childcare worker has been charged with identity theft for using a false social security number, even though the department had no authority to require a social security number from daycare providers, according to a DSHS press release. Many other childcare providers are being investigated for overpayments and theft-charges that may lead to their incarceration. A closer look reveals a government investigation that is based almost entirely on prejudice, and an anti-immigrant witch hunt that is ripping families apart and forcing residents in this migrant farming town to live in fear.

### **Hard Work for Low Wages**

In Mattawa, one of the poorest towns in Washington, the need for daycare emerged after the government opened wide tracts of land for agriculture in the 1980s. Corporate agriculture

flooded in, profiting on the apple, pear, grape, hops, and alfalfa harvests. For most of Mattawa's residents, who number 5,500 during peak agricultural seasons, the day begins as early as 5 a.m. Filling an 800 pound bin full of Washington's famous Red Delicious apples garners \$10, and a fast picker can fill six bins in a day, says Tomás Villanueva, a founder of the United Farm Workers (UFW) in Washington and a community relations coordinator for DSHS.

The people who watch the workers' children start their days even earlier, often beginning at "four in the morning and finishing at seven at night," recalls one former daycare worker. "For farmworkers, the need for childcare is dire. If you're poor, you could pay more for childcare than you earn in the fields," says Villanueva. Yet the notion of state support for immigrants has never gone over well with the town's white residents. In 2002, the city blocked government and non-profit housing for farmworkers, arguing that the residents, who would not pay property taxes, would be a drain on municipal coffers.

So when the media joined the attack on undocumented daycare workers, they touched the right buttons for local residents. "So how are these illegal aliens able to gain access to tax money to run daycare centers?" asked KREM 2 reporter Randy Shaw. "They are using badly forged ID cards in an attempt to pull the wool over the eyes of professional DSHS licensers." While Shaw brands all of the daycare workers in Mattawa as "illegal aliens," most Latinas assert that they are citizens or legal residents. The Seattle Times quoted former DSHS investigator Ross Carmen who accused childcare workers of "hundreds of millions of dollars" in fraud, a bizarre allegation for women who are barely making minimum wage. "We're not just

wasting," Carmen said in a television interview with KREM 2 News. "We're violating federal law by giving this money to people who don't have a right to be in the country." The local belief among Mattawa's white residents, based largely on these reports, is echoed by Sergeant Steve Jensen of the Mattawa police department when he says, "these women are bringing in \$10,000 a month at least from taxpayer dollars."

Along Mattawa's roughly paved streets, low-cost, pre-manufactured homes and trailers are separated by dusty lawns scattered with weeds and few trees. In the evening, the town's residents return home from the fields, sun-scorched and weary from hard labor in temperatures that regularly exceed 100 degrees. Daycare may earn more than pruning and picking, but not much. Most daycare workers in Mattawa earn between \$10,000 and \$18,000 a year. "Childcare is not a money-making activity," says Rachel Langen, Director of Washington's Department of Childcare and Early Learning.

Yet hard work for low wages has done little to protect Mattawa's daycare workers from overzealous state and county officials. Of the 46 Latinas investigated, fraud investigators have referred 10 cases to the County Sheriff and Prosecutor for possible felony charges. DSHS' Division of Fraud Investigation and the county prosecutor are pursuing these charges even after DSHS found that the daycare workers, insofar as it can determine, did not bill the state for "phantom children."

The Department of Social and Health Services also reports that thus far, 22 daycare providers are under investigation for the assessment and collection of overpayments. The

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## *WASH. STATE SAYS MISSING RECORDS = OVERPAYMENT = FRAUD*

The accompanying article tells a disturbing tale of multiple violations of the constitutional rights of immigrant women. Anti-immigrant sentiment appears to be the real basis for charges of theft and overpayment and accusations that Latina child care providers billed the state for “phantom children.” But the legal “hook” for the charges appears to be a state requirement that providers keep attendance records for five years,<sup>1</sup> together with an irrebuttable presumption that failure to do so amounts to overpayment.<sup>2</sup> Although the state of Washington appears to equate provider overpayment with fraud, many other states clearly distinguish between inadvertent errors and intentional acts which constitute fraud.<sup>3</sup>

As the article notes, on May 6 and 7, 2002, state welfare agency fraud investigators accompanied by agents of the Immigration and Naturalization Service (now the Bureau of Customs and Immigration Enforcement under the Department of Homeland Security) raided the homes while the women were caring for children. They confiscated every child care record the providers could produce in the ensuing chaos. Over a year later the investigators referred 12 cases to the county sheriff and prosecuting attorney’s office for felony prosecution. Three child care providers were arrested and jailed. One had all her child attendance records but was nonetheless held for 70 days until further investigation finally confirmed that she had not engaged in theft or any other illegal activity. A second had been wrongfully arrested because she had the same name as another woman, and she too was released. A third provider

was convicted of unrelated identity theft. Given the lack of successful prosecutions of these three and the fact that the statute of limitations has nearly run, Ty Duhamel of Columbia Legal Services, the providers’ counsel in the administrative proceedings on the overpayment charges, finds it unlikely that any of the other providers will be charged with fraud. Nevertheless, overpayment charges persist.

Many states require providers who care for children receiving subsidies to submit attendance sheets to the state agency in order to receive payment. While it is common for states to require providers to retain such records for several years, failure to do so normally leads to no more than fines or other minor sanctions. The state of Washington appears to take the approach that where there is failure to retain records there is overpayment (despite no apparent dispute that care was actually provided) and overpayment is money received improperly, which means fraud.

The Department has said that approximate 30 child care providers will be required to make substantial repayment to the state based on not having child attendance sheets. But of the initial eight overpayment notices sent, three cited no overpayments and three others had reduced the amount at issue from thousand of dollars to only a few dollars because the providers still had attendance sheets in their possession for which fraud investigators had not returned.

Five child care providers have requested fair hearings to appeal

the administrative actions seeking repayment. Four are represented before the state’s Office of Administrative Hearings by Ty Duhamel and Joachim Morrison, attorneys with Columbia Legal Services; another is represented by the Seattle law firm of MacDonald, Hoague and Bayless.

These attorneys were successful in their request to join the cases into a group hearing and have filed a motion to dismiss the administrative proceeding on the grounds of governmental misconduct. Appellants contend that the state violated their clients’ Fourth Amendment rights to be free from unreasonable government searches and seizures; their Fourteenth Amendment right to due process in including INS agents in the raids of providers’ homes for the purpose of intimidation; unlawfully converted a subpoena duces tecum into a search warrant; illegally confiscated original records, and failed to translate subpoenas into Spanish, in violation of Title VI of the Civil Rights Act. Duhamel and Morrison are moving forward with discovery and anticipate that the motion to dismiss will be heard in August 2004.

According to Duhamel, his clients are excellent record keepers. He says that the entire string of events is due to prejudice and to fraud investigators who see their job as catching criminals regardless of whether any illegal activity is occurring. Duhamel says that investigators have lost, mis-copied, and otherwise spoiled child care records. He quotes one former state welfare agency employee as saying, “I have worked with [these providers] for many years. They have been the easiest group of providers to work with. When I was supervising the [child care program] and there were major changes we would meet with [these providers] and they were

always very conscientious. They would let us know if a family needed us to approve more hours and help avoid other problems. [These providers] handled this better than anybody, and they were the ones that would report information that we needed to run the [child care program] properly."

Nonetheless, Duhamel reports that the state has continued to justify its arrests of low-income immigrant child care providers, release of sensationalist charges to the press, and pursuit of overpayment proceedings.

<sup>1</sup> Wash. Admin. Code § 388-155-460(5).

<sup>2</sup> Under Wash. Admin. Code § 388-290-0270(6)(b), overpayment exists when a "provider does not have attendance records that support the billing."

<sup>3</sup> See, e.g., North Carolina Department of Health and Human Services, *Child Care Subsidy Service Policy Manual*, Ch. 23, "Fraudulent Misrepresentation and Overpayments," (2002).

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overpayment allegations result mainly from a failure to comply with State regulations requiring that daycare providers retain child attendance timesheets for five years—a requirement which few providers in Mattawa are likely to be aware of. When the five-year regulation was established, the English version of the state's manual for licensed childcare providers was updated with the new information. The Spanish version was not.

## So Many Daycares

As the county drags out an investigation, the women are caught in a legal limbo with a likely outcome of prison or deportation. What is the main motivation? "Racial tension in Mattawa is thick," says Villanueva.

"People in power are seeing the community changing, and are afraid political power is going to change. The mayor used to be very supportive of the Latino community, but that has changed completely."

Judy Esser, a white-haired woman in her 50s who is both Mattawa's mayor and operates the local realty office, explains how the crackdown began. "We were asking, why are there so many daycares in this town?" The suggestion of fraud led DSHS investigators to file for a subpoena to investigate every daycare in Mattawa. "Most people think I was the one who told them to investigate," says Esser, her thin-lipped smile revealing pride rather than chagrin. It was someone else at town hall, she says, "but frankly I don't mind that people think so."

Soon after, in three days beginning on May 7, 2002, investigators invaded the homes of every childcare provider in Mattawa. "Two men came into my house while I was caring for kids," says Maria Chavez, a 56-year-old widow and mother of two. Chavez has lived in Mattawa for 15 years and has been providing childcare for the past six. She recalls the men pushing their way into her living room, one a DSHS investigator, the other introduced as an interpreter. "They came right into my house. They were shouting at me and telling me to hurry. The kids were crying and crying, holding onto me, they were terrified."

The investigators demanded that Chavez and the other women turn over all of their records of providing childcare. Then, more frightening questions emerged. "They started asking me for my legal residency papers, check stubs, and my social security card," Alicia Medrano, a 37-year-old wife and mother of four, remembers. "They asked me for the

social security number of my husband and my kids. They asked me who the cars out front belonged to, and for the social security numbers of their owners. I didn't understand why they were asking all these questions."

The reason why, as the women would not discover until a chance encounter between one daycare provider and one of the "interpreters" who accompanied the fraud investigators in October, was that the "interpreters" were actually agents from the INS in disguise.

The subpoena did not grant investigators the right to request residency information, nor did it permit them to take original documentation. Yet, "they took everything I had," says Sonia Jimenez\*, a 33-year-old mother of three. "They took all the originals, and all of the papers they returned are copies. After they returned it, I am still missing the file from one child, and on some of the copies I can't read important dates." In some instances, the investigators forced women to sign a statement confirming that all documents had been produced, so that investigators could later say that subsequently discovered records were manufactured. These methods have left women vulnerable to accusations that might be levied against them.

Alicia Medrano is legally permitted to work in the U.S., but she is so traumatized and frightened by the incursion that she sent her childcare license back to the department. "They tell me I still have an overpayment," she says in an apprehensive voice. "I have so much stress right now I am seeing a doctor. I don't know what will happen to me or my family." The women are anxiously awaiting the outcome of Rodriguez's case. Several of their cases are already pending in the hands of the county prosecutor.

## The Hand of Local Prejudice

The unannounced raids were unlike any seen in Eastern Washington since before the INS curtailed the practice of arbitrary sweeps of Latino homes and workplaces, decades ago.

For years, employers who hired undocumented workers got by on a “nod and a wink,” because everyone recognized that migrant farmers were good for business, says Amelia Ramon, manager of Northwest Communities Education Center, an organization that supports Eastern Washington’s Latino community. For daycare workers in Mattawa, that feels like a distant past. “The INS feels like they can get away with a lot more. Since Sept. 11,” Ramon says.

The tension between immigrants and white residents in Mattawa and in migrant farming towns across the nation, however, existed well before Sept. 11. Mattawa is 90 percent Latino yet run by a white mayor, white law enforcement, and mostly white business owners. The Latino population is perceived as a threat by the town’s white residents. “We’ll lose the town,” says Steve Jensen, a police sergeant with a buzz haircut and tobacco packed in his lower lip. “Within another five years, this town will be 100 percent (Latino). I wouldn’t raise my kids here anymore.”

Like Rodriguez, Medrano, and Chavez, most of the daycare workers have formed the fabric of Mattawa since the first big orchards began to fill the once-barren slopes of the Columbia River gorge. They have seen their children grow up in Mattawa, get married, and have their own children. They remember when the streets of Mattawa were still made of dirt. “They don’t have a right to intimidate us or discriminate against us,” says Chavez. “They are always looking for ways to incriminate us,

## NEW PUBLICATIONS BY THE CHILD CARE LAW CENTER

### Child Care Subsidies in California

The Child Care Law Center has published a new manual entitled *Child Care Subsidies in California*. This publication provides a detailed examination of California’s complex subsidized child care system. The manual provides information about Stages 1, 2, and 3 of CalWORKs child care, and various other subsidy programs administered by the California Department of Education. Although this manual is designed as a tool for legal advocates and contains extensive citation, it organizes and explains the law governing subsidies in a highly readable format. The 115-page manual is available for \$25.00; inquire about reduced rates for legal services programs and for parents and about bulk rates.

### Legal Issues for Family Child Care Providers in California: Employing an Assistant

This publication provides an overview of employer responsibilities in hiring and supervising an assistant in a family child care home. This 13 page publication is available in both Spanish and Chinese and costs \$12.50.

### Legal Issues for Family Child Care Providers in California: Reporting Child Abuse

This publication describes the rights and responsibilities of licensed family child care providers as mandated child abuse reporters in California. This 15 page document is available in both Spanish and Chinese and costs \$12.50.

### Legal Issues for Family Child Care Providers in California: Liability and Insurance

This publication describes the legal issues surrounding liability and insurance for licensed family child care providers. This 14 page document is available in both Spanish and Chinese and costs \$12.50.

but we have the right for respect.”

Now, Rodriguez’ days in Washington may be numbered. Rodriguez and the rest of the daycare workers are at the mercy of a justice system where the odds are stacked against them. Thomas Earl, the public defender initially assigned to Rodriguez because she could not afford her own representation, is in disbarment proceedings for failing to show up in court or prepare for cases, pressuring clients to plead guilty, and squeezing poor clients for money. In a rural county lacking adequate justice services for the poor and Spanish-speaking, and with ineffective assistance of counsel, the danger of wrongful convictions is high. “I think

they could deport me. My application is in to the INS, but I don’t know when I’ll receive more information,” says Jimenez. “When there’s a knock on my door I don’t know if it’s going to be them coming for me.”

Like Jimenez, Rodriguez has applied for citizenship-her right under federal law because she has been in the country for more than 10 years and because she has a citizen child with exceptional medical and personal needs. Although she submitted her application last April, such requests take months, if not years, to process. If Rodriguez is convicted of theft, she is likely to lose her deportation hearing as well. These have become the consequences for providing

childcare in a town that desperately needs it.

The outcome of these investigations could likely rest more upon prejudice than on the evidence against these women. The nature of small town justice suggests as much. In 1999, all-white juries convicted 46 African Americans in Tulia, TX, of drug offenses based on scant evidence. Many spent years in prison before it was determined that their arrest was based solely on the fabrications and false accusations of one racist white police officer. With government authority backing the hand of local prejudice, Mattawa, Washington may be on track to join Tulia's place in history. And 46 Latina women, their families, and the countless children they care for will be the victims.

\* Name has been changed.

Will Pittz is a senior researcher at the Applied Research Center

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### ***STUDY DOCUMENTS RECIPIENTS' EXPERIENCES WITH, ATTITUDES TOWARD, WELFARE***

Since welfare reform passed, volumes have been written about the decline in welfare rolls, how states reacted to their new flexibility under Temporary Assistance for Needy Families (TANF), and successes and failures of training and employment programs. Little attention, however, has been paid to the views of those with the most at stake: people who receive cash assistance.

Shortly after California adopted CalWORKS (California Work Opportunity and Responsibility for Kids) in response to the change in federal law, the state entered into a multi-million dollar evaluation contract with the

Rand Corporation. Part of that evaluation was a household survey of nearly 3,000 current and former CalWORKS recipients "to analyze the implementation of CalWORKS and to assess the program's effect on welfare recipients' transition to work and self-sufficiency." The survey was conducted in six counties that together have 58 percent of the state's recipients: Alameda, Butte, Fresno, Los Angeles, Sacramento, and San Diego. The "first wave" of the study – *Results from the First California Health and Social Services Survey* – was released in January.<sup>1</sup>

#### ***Survey Sample***

Respondents had received aid between early 1999 and early 2000 and included both single-parent and two-parent families. Surveys were conducted in English or Spanish. Only 7.1 percent of the initial pool of 4,500 people refused or were ineligible to participate but researchers were unable to reach 28.2 percent of the sample. Two-thirds of the sample were receiving benefits at the time of the interview; the others, known as "leavers," had left cash aid.

Slightly more than half had never been married; 18 percent were currently married. Latinos comprised 45 percent of the sample while one-fourth were black, nearly one-fifth were white, and 13 percent were Asian or other. Average education level was completion of 11<sup>th</sup> grade. The average respondent was 35 years old and had 2.6 children.

#### ***Knowledge and Attitude Toward CalWORKS***

Welfare reform's most dramatic policy change was the imposition of time limits. Adults, unless they are exempt, may receive cash assistance for no more than five years during their lifetime and for no more than 18

or 24 months at a stretch. (In California, children may continue to receive aid after those periods expire.) The theory is that recipients should, within that time, be able to become self-sufficient.

To assess the program's success in conveying this change, surveyors asked about respondents' knowledge of the new time limits. The results were cause for serious concern: only half answered correctly regarding time limits for adults. When the question was posed no one in California had yet "timed out," or reached the five-year limit. Thus, knowledge about it may increase as deadlines approach. Another significant change was the "family cap," or failure of the grant amount to increase with the birth of a child while receiving aid. This policy was somewhat better known than the lifetime time limit; 58 percent answered correctly when asked about it.

#### ***Activities While Receiving Aid***

Most adults who receive CalWORKS must participate in welfare-to-work activities. Nearly three-quarters of respondents whose own needs were included in their cash grants reported being required to participate (ranging from 60 percent in San Diego and Butte Counties to 78 percent in Los Angeles County). Most of those (84 percent) reported that they were in fact participating. The most common reasons for nonparticipation were disability, lack of child care or transportation, and "haven't had a chance."

Twelve percent of recipients reported reduction in their benefits during the preceding year for failure to comply with welfare-to-work requirements, ranging from 6 percent in Butte County to 13 percent in Los Angeles County. These recipients generally reported that they coped by relying on family and friends for

money and/or by not paying bills.

Of respondents not required to participate, about one-fourth were exempt for reasons such as caring for an ill family member or a child under the age of 12 months. One-fourth reported being in school; an additional one-fourth reported working. Researchers noted that more respondents reported being in school and fewer reported nonparticipation in welfare-to-work activities than county welfare department data reflected.

Overall, 42 percent of recipients reported working (but not earning enough to leave welfare). On average, they worked just under 30 hours per week at \$7.42 per hour. Half of the workers reported working 32 or more hours per week; one-third reported working 40 hours or more. One-quarter were in temporary jobs and half of the jobs had lasted only about six months or less.

### ***Well-Being While Receiving Aid***

The average respondent earned \$296 per month, with average household earnings (including people not in the assistance unit) of \$738. Total monthly household income averaged \$1,559. Nearly half reported owning a car, although the 74 percent car ownership rate in rural Butte County skewed that figure. They reported an average of \$47 in a bank account and \$2,288 in non-automobile debt.

Nearly 70 percent lived in households below the poverty line. Percentages in households living in extreme poverty (less than half of the poverty line) ranged from 15 percent in San Diego County to 27 percent in Fresno County.

The survey did not find that hunger was common, but 17 percent of adults and 9 percent of children sometimes or often went hungry. Almost one in five had sought help

from a food bank in the previous year.

### ***Outcomes for Welfare Leavers***

Most respondents (62 percent) who no longer received assistance had left cash aid due to employment. Some left because a spouse (or other relative) found a job (8.5 percent) while others (12 percent) gave “too much hassle/paperwork” as reasons. Regardless of the reason, nearly three-quarters of leavers were employed, earning an average of \$8.78 hourly at their main jobs. Three-quarters of these worked full time. Over half had health insurance available through their jobs, but many did not accept it due to cost. Twenty-nine percent of leavers had not worked in the previous month; 9 percent sought work; 20 percent neither worked nor looked for work.

Leavers were more likely to live with other adults (69.3 percent vs. 56.9 percent), to have fewer children, and to have higher earnings and assets than people still receiving cash aid. Leavers’ average monthly earnings were \$818; 70 percent owned a car and they had an average of \$225 in the bank.

However, most leavers continued to receive some sort of public assistance. Nearly two-thirds received medical benefits (ranging from 57 percent in Alameda County to 77 percent in Fresno County) and fourteen percent received food stamps.

Forty-two percent of leavers lived in households below the poverty line, and the proportion of leavers’ food insecurity was nearly identical to respondents still on aid. Leavers reported more

housing instability and significantly more homelessness (3.0 percent vs. 0.3 percent) than those still receiving assistance.

### ***Family and Child Outcomes***

Leavers were more likely than those on aid to be married (25 percent vs. 15 percent) and to ever have been married (53.7 percent vs. 45 percent). Children of leavers were more than twice as likely as children of non-leavers to have lived with other relatives in the year before the interview.

Nearly half of respondents had at least one child in child care in order to work; 6 percent reported needing but not receiving child care. Most child care was provided by relatives. Only about one-third of respondents using child care reported receiving subsidies (36 percent of recipients vs. 30 percent of leavers).

Children of leavers appeared to experience more problems at school than children of recipients. More than one-fourth of leavers (26.2 percent) reported that a child or children missed more than five days of school in the previous month, compared with 17.2 percent of recipients. More than twice as many leavers (12.1 percent) as recipients (4.5 percent) reported that a child was suspended or expelled from school during the previous year. Children of leavers also experienced greater transience, attending more than one school during a year.

### ***Conclusion***

The survey results suggest that welfare reform has done little to improve the circumstances of low-income families. While the earnings and assets of leavers were somewhat higher than for those still receiving assistance, leavers also experienced a greater degree of homelessness and their children seemed to have more problems at school. Rand is currently compiling data from a second wave of the survey.

<sup>1</sup> The report is available at <http://www.rand.org/publications/TR/TR121/TR121.pdf>.

## THANK YOU!

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