

Virtual training throughout SY2021-22



AGENDA

Special Education Law Series Part 1

March 10, 2022: Zoom Link: https://zoom.us/j/99608587780

3:30 – 3:40 p.m. Welcome and Housekeeping Announcements

Margee Robertson, Division Director for Special Education Programs,

Wyoming Department of Education and

Deana Smith, Wyoming Department of Education

3: 40 – 4:10 p.m. Presentation:

Least Restrictive Environment Legal Requirements: Applicability

to Virtual Settings and Unilateral Parent Choices

Amy J. Goetz,

This session will review the applicability of LRE requirements under the IDEA and Section 504 to virtual settings and to unilateral parent choices of placement such as private school and home school options, including statutory and regulatory requirements, government guidance, and court

decisions.

4:10 – 4:20 p.m. Attorney Comments/Reactions

Jose Martin

4:20 – 4:25 p.m. Break

4:25 – 5:00 p.m. Presentation:

Least Restrictive Environment under IDEA: Basics, Federal

Regulations, Applicability to Preschool Students

Jose Martin

From the inception of special education as a federal law, its provisions have required that eligible students with disabilities be placed in the Least Restrictive Environment (LRE) within which they can receive an appropriate education. This session will review the basic LRE

requirement's formulation, the requirements of the IDEA federal regulations addressing LRE, and the applicability of the LRE requirement to preschool students who are IDEA-eligible, including some key court cases that illustrate the issue.

5:00 – 5:10 p.m. Attorney Comments/Reactions

Amy Goetz

5:10– 5:25 p.m. Open Q & A

Participants are encouraged to ask topic related questions.

5:25 – 5:30 p.m. Closing Remarks Series #1



Virtual training throughout SY2021-22



AGENDA

Special Education Law Series Part 2

April 14, 2022: Zoom Link: https://zoom.us/j/95458378330

3:30 – 3:40 p.m. Welcome and Housekeeping Announcements

Margee Robertson, Division Director for Special Education Programs,

Wyoming Department of Education and

Deana Smith, Wyoming Department of Education

3: 40 – 4:10 p.m. Presentation:

Responding to Lack of Progress: Qualitative and Quantitative

Remedies of Recovery Services

Amy J. Goetz,

This session will review the evolving issues of responses to lack of progress and decisions about appropriate recovery remedies due to COVID-related impacts, including compensatory education remedies generally and COVID Recovery Services specifically, based on

government guidance and court decisions.

4:10 – 4:20 p.m. Attorney Comments/Reactions

Jose Martin

4:20 – 4:25 p.m. Break

4:25 – 5:00 p.m. Presentation:

Responding to Lack of Progress: Legal Issues in Students Moving

Into and Out of Virtual Settings

Jose Martin

The COVID pandemic accelerated the already-growing role of online and virtual instructional programs. This session will address some problematic issues that can be presented when IDEA students move into and out of virtual settings, including proper procedural mechanisms for accomplishing the change to and from, addressing problems that may arise in virtual programs, and handling situations where students may have missed certain IEP services in the virtual setting and are now returning to live instruction.

5:00 – 5:10 p.m. Attorney Comments/Reactions

Amy Goetz

5:10– 5:25 p.m. Open Q & A

Participants are encouraged to ask topic related questions.

5:25 – 5:30 p.m. Closing Remarks/Conclusion of Series #2



Presented by

Jose Martín, Attorney

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What is the Least Restrictive Environment? A Working Definition

- The educational setting within which the child can receive FAPE and have maximum exposure to nondisabled peers (34 C.F.R. §300.114)
- Also, the educational setting, within which a child's IEP can be implemented, that allows for maximum exposure to nondisabled peers

Foundation—The LRE Requirements of the IDEA Regulations

- Sp. ed. students must be educated with non-disabled students to the maximum extent appropriate (34 C.F.R. §300.114)
- A change of placement from regular class to a more restrictive setting can take place only after properly determining that a FAPE cannot be provided in the regular class, even with legitimate efforts at providing supplementary aids, services, and modifications (34 C.F.R. §300.114)

Foundation—The LRE Requirements of the IDEA Regulations

 School districts must maintain a continuum of placements for IDEA-eligible students (34 CFR 300.115)

A variety of instructional settings

And, itinerant sp ed instruction provided in conjunction with regular class placement (i.e., inclusion services)

Foundation—The LRE Requirements of the IDEA Regulations

• IEP teams must make **placement decisions** for IDEA students, and must do so at least annually (34 CFR 300.116(b)(1))

In most states, this happens through the annual IEP team meeting process

• IEP team placement decisions must be **based on each** student's IEP (34 CFR 300.116(b)(2))

Thus, the IEP team decision sequence—First IEP (present levels of performance, goals, progress measures, services), then placement

From the IEP, the IEP team asks: where is the LRE within which the IEP can be properly implemented?

Unless the IEP requires some other arrangement,
 children should be placed in the school where
 they would attend if they were not disabled (34 CFR 300.116(c))

Congress preference for "default" placement—The child's regular home campus

Unless the IEP cannot be implemented in the settings offered in the home campus

• Otherwise, the placement must be as close as possible to the student's home (34 CFR 300.116(b)(3))

If home campus cannot implement student's IEP, then the IEP team must go to the next closest campus to the home that is capable of implementing the IEP

Meaning, the campus with the settings needed to implement the IEP

 In making placement decisions, the IEP team must consider any potential harmful effects on the child or on the quality of required services (34 CFR 300.116(d))

This requirement is embedded in the IEP forms, and requires that the IEP team consider the potential harmful effects of the placement decision

Requirement applies whether IEP team is considering a more restrictive setting or a less restrictive setting

• In making placement decisions, the IEP team must consider any potential **harmful effects** on the child or on the quality of required services (34 CFR 300.116(d))

At times, identified potential harmful effects, such as stigma of needing sp ed setting, can be addressed through other services, such as counseling

At times, the consideration requires weighing the benefits of a placement versus its potential harmful effects

• IDEA students must not be removed from regular classrooms solely because of the **need for classroom modifications** (34 CFR 300.116(e))

A more recent addition to the regulations, included to reiterate that IEP team should not place a child in a sp ed setting just because they may need classroom accommodations or modifications

(Requirement already a part of Fifth Circuit's LRE analysis of **Daniel R.R.**)

How Courts Analyze LRE Cases

- Daniel R.R. Analysis (5th Circuit—LA, MS, TX, adopted by 3rd (DE, NJ, PA), 10th (OK, KS, NM, CO, WY, UT) and 11th (AL, FL, GA))
 - I. Can student be educated satisfactorily in regular classes with supplementary aids and services? Six sub-factors help answer the question

Has school attempted placement in regular classes?

Were those efforts sufficient, and not mere token attempts?

Daniel R.R. Analysis

Will most of the teacher's time be devoted to the student or to modifying the curriculum?

Can student receive educational benefit in the regular classroom?

What has been the child's overall experience in regular classes?

What is the child's effect on the classroom and other students' education?

Daniel R.R. Analysis

2. If the child cannot be educated in regular class, has the child been mainstreamed to the maximum extent appropriate?

LRE is not an "all-or-nothing" concept

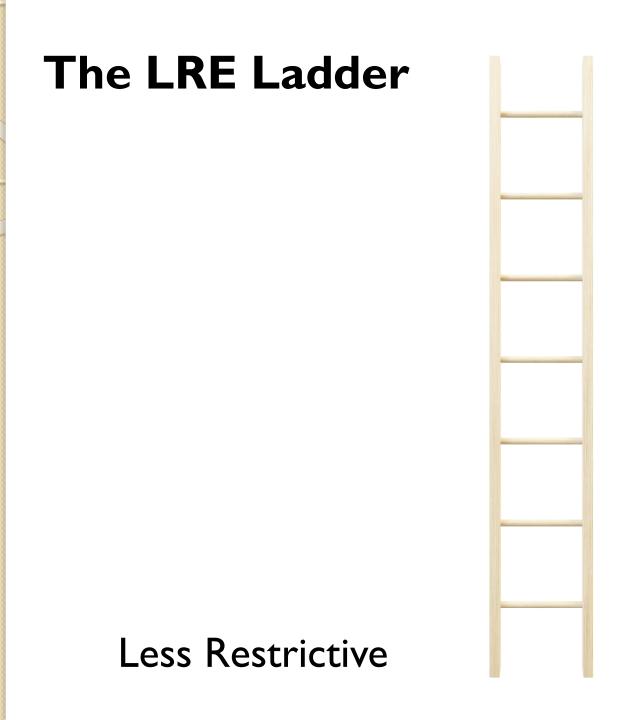
Rather, potentially *gradual* movement to more restrictive settings, as needed for FAPE

Use of continuum of placements for wide variety

Daniel R.R. Analysis

Case assumes the initial placement in sp ed will be full-time regular classes with sp ed support services, unless an unusual situation is presented.

Placement starts with the least restrictive possible, and moves gradually to more restrictive settings if FAPE is determined to not be possible in present setting (with appropriate support services)



More Restrictive

Moves to More Restrictive Settings

Require careful IEP team consideration, as they can trigger litigation (and stay-put protection—placement is frozen at last agreed placement during the pendency of the lawsuit)

Documentation of efforts to provide FAPE in less restrictive setting, with various sp ed support services, is crucial.

Must be able to show that change of placement is warranted, based on application of *Daniel R.* factors.

Moves to More Restrictive Settings

Plan and get guidance before considering a more restrictive setting, particularly a behavior unit

LRE Caselaw—Preschool Students

• E.G. v. Fair Lawn Bd. of Educ. (3rd Cir. 2012)

Preschooler with AU challenged placement in an AU pre-K classroom with I:I ABA and "reverse inclusion"

Parents wanted inclusive pre-K classroom

Court found student lacked the skills needed to benefit from regular class, would wander around class, and exhibited inappropriate behaviors

• E.G. v. Fair Lawn Bd. of Educ. (3rd Cir. 2012)

Modeling benefit was minimized because she neither noticed nor interacted with peers

Student needed lots of I:I instruction, had made progress in AU classroom, and had opportunities for interaction with typical peers

Court held LRE applies with equal force in pre-school contexts

• N.B. v. Tuxedo Union FSD (2nd Cir. 2012)

Parent challenged proposal to place PDD preschooler in a special ed class

Student made good progress by modeling typical peers, and with 1:1 aide, in regular pre-K

School had no evidence that FAPE was not feasible in regular pre-K

Court held proposal was not LRE, awarded tuition reimbursement

• N.B. v. Tuxedo Union FSD (2nd Cir. 2012)

Notes—See Letter to Neveldine, 24 IDELR 1042 (OSEP 1996), Dear Colleague Letter, 58 IDELR 290 (OSEP 2012) and 34 CFR 300.116 (notes applicability of LRE requirements to preschool students).

LRE requirements apply even to preschool students eligible only for speech services

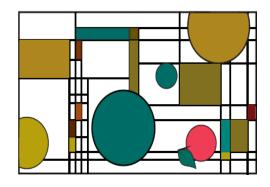
LRE applies even if the district has no pre-K

Schools may need to explore Head Start agencies or contracts with other schools

• N.B. v. Tuxedo Union FSD (2nd Cir. 2012)

In Wyoming's CDC-based model for preschool students with disabilities, CDCs can focus on reverse-inclusion efforts (bringing nondisabled peers to sp ed classroom settings)

Or, CDCs could create regular preschool programs that could serve as mainstreaming opportunities for sp ed preschool students



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LEAST RESTRICTIVE ENVIRONMENT

WAVES Special Education Law Series
Wyoming Department of Education

<u>Least Restrictive Environment Requirements:</u>
Applicability to Virtual Settings and Unilateral Parent Choices

March 10, 2022 Amy J. Goetz

I. INDIVIDUALS WITH DISABILITIES EDUCATION ACT

A. General Least Restrictive Environment ("LRE") Requirements

A school district must ensure that to the maximum extent appropriate to their needs, children with disabilities are educated with children who are not disabled. In addition, a school district must ensure that "special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and

services cannot be achieved satisfactorily." 20 U.S.C. § 1412(a)(5)(A). This statutory definition guides the analysis of the LRE for a particular student. The concept is also referred to as "inclusion" or "mainstreaming" with subtle variations in application (mainstreaming may indicate that the student will meet the curriculum requirements for the class). The Department of Education does not define the term "inclusion" but emphasizes the individualized inquiry required for every LRE determination. *OSEP Memorandum* 95-9, 21 IDELR 1152 (OSEP 1994).

The law starts with the presumption that students with disabilities will be fully included in the general education classroom with typical peers and supported as necessary with effective (based on peer-reviewed research to the extent practicable) supplementary aids and services. 20 U.S.C. § 1414(d)(1)(A)(i)(IV). "First consideration" must be given to placement in a regular classroom with necessary supplemental aids and services before considering more restrictive placements. *Letter to Cohen*, 25 IDELR 516 (OSEP 1996). An IDEA-eligible student cannot be excluded from the general education classroom based on the need for a modified curriculum or one-to-one assistance. The balance must always be struck on a case-by-case basis and never based on categorical decisions like the configuration of the delivery system, the availability of educational or related services, the availability of space, or administrative convenience. *Letter to VanWart*, 20 IDELR 1217 (OSEP 1993).

State funding mechanisms (distribution of funds on the basis of the type of setting) may not result in placements that violate the LRE mandate. 20 U.S.C. § 1412(a)(5)(B).

The right to an education in the least restrictive environment must be balanced against the paramount right to a free appropriate public education (FAPE). "While including students in the regular classroom as much as is practicable is undoubtedly a central goal of the IDEA, schools must attempt to achieve that goal in light of the equally important objective of providing an education appropriately tailored to each Student's particular needs." *P. v. Newington Bd. of Educ.*, 52 IDELR 2 (2d Cir. 2008). The IEP Team must consider whether the student will receive academic and nonacademic benefits in a general education classroom.

B. Continuum of Alternative Placements

A school district must have a "continuum of alternative placements" available to meet the needs of special education students. 34 C.F.R. § 300.115. This continuum must include instruction in regular classes, special classes, special schools, home instruction and instruction in hospitals and institutions. 20 U.S.C. § 1401(29). In addition, school districts are required to make supplementary services (such as resource room or itinerant instruction) available in conjunction with regular classroom placement. 34 C.F.R. § 300.115(b)(2).

C. Placements

Placement decisions must be made by a group of people, including the parents, who are knowledgeable about the child, the meaning of evaluation data, and who are familiar with the placement options, in conformity with LRE provisions. 34 C.F.R. § 300.116(a).

The child's placement must be determined at least annually, be based upon the IEP, be as close as possible to the child's home, and unless otherwise *required*, in the school that he or she would attend if not disabled. 34 C.F.R. § 300.116(b) and (c).

In making the LRE choice, the IEP Team must consider any potential harmful effect on the child or on the quality of services needed. 34 C.F.R. § 300.116(d).

Children *may not be removed* from an age-appropriate regular classroom solely because of needed modifications in the general education curriculum. 34 C.F.R. § 300.116(e).

D. Nonacademic Settings

To the maximum extent appropriate *to the needs of the child*, the school district must ensure (including by providing supplementary aids and services determined appropriate and necessary by the IEP Team) that students with disabilities participate with non-disabled children in nonacademic and extracurricular services and activities (including meals, recess, counseling, athletics, transportation, health services, recreational activities, special interest groups or clubs, referrals for assistance, and employment of students). 34 C.F.R. §§ 300.107 and 300.117.

E. Congressional Findings Emphasize Access and LRE

Congress made explicit Findings, in reauthorizing the IDEA (20 U.S.C. §1400(c)) including the following:

- "Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities."
- Before the IDEA, children with disabilities were excluded from the public schools and from being educated with their peers.
- Implementation of the IDEA can be more effective by coordinating special education with other school improvement efforts, so that "special education can become a service for such children rather than a place where such children are sent."
- Implementation of the IDEA can be more effective by providing appropriate special education and related services, and aids and supports in the regular classroom.
- Implementation of the IDEA can be more effective by having high expectations and ensuring access to the general education curriculum in the regular classroom, to the maximum extent possible, in order to
 - o Meet developmental goals
 - o Meet the challenging expectations established for all children
 - o Be prepared to lead productive and independent adult lives

F. IEP Content Provisions

In addition to the explicit LRE provisions and Congressional Findings above, the IEP content provisions of IDEA contain language that emphasizes the rights of students with disabilities to access to the regular curriculum. For many years, the focus of LRE was on *physical access* to the mainstream classroom. Congress and the Department of Education have made increasingly clear that

students with disabilities are entitled also to *curricular access* to general education content and curriculum and state standards applicable to all children.¹

The section of the IDEA containing provisions that govern Individualized Education Programs (20 U.S.C. § 1414(d)), is clear that students with disabilities are entitled to access regular education from a content, or curricular sense as well.

- In order to make FAPE available, the IEP must be designed to enable the child to be involved in and make progress in the general education curriculum. 20 U.S.C. § 1414(d)(1)(A)(i)(II)(aa).
- The general education curriculum is defined as "the same curriculum as for nondisabled children." 34 C.F.R. § 300.320(a)(1)(i).
- The very definition of "special education" reveals the objective to adapt content, methodology or delivery of instruction to address each child's unique needs and to ensure access to the general curriculum, "so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children." 34 C.F.R. § 300.39(b)(3).
- The IEP must include a statement of the child's present levels of performance, including how the child's disability affects his or her involvement and progress in the general curriculum (for preschool children this is a statement of how the disability affects the child's participation in appropriate activities). 20 U.S.C. § 1414(d)(1)(A)(i)(I)(aa).
- The IEP must include a statement of services for the child and a statement of the program modifications or supports for personnel that will be provided so the child can advance appropriately towards attaining annual goals, be involved in and progress in the general curriculum, and participate in extracurricular and non-academic activities. 20 U.S.C. § 1414(d)(1)(A)(i)(IV).
- The IEP must include an explanation (justification) of the extent, if any, that the child will *not* participate with non-disabled children in regular classes, extracurricular and nonacademic activities. 20 U.S.C. § 1414(d)(1)(A)(i)(V).

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¹ See *Dear Colleague Letter* (OSERS 11/16/15) ("IEP goals must be aligned with grade-level content standards for all children with disabilities" because each State is required "to apply the same challenging academic content and achievement standards to all schools and all children in the State, which includes children with disabilities").

• The IEP must include a statement of why a child cannot participate in a regular assessment. 20 U.S.C. § 1414(d)(1)(A)(i)(VI).

II. CASE LAW APPLYING THE IDEA LRE MANDATE

A. The Majority View

The majority of the Circuit Courts of Appeals, including the Second, Third, Fifth, **Tenth** and Eleventh Circuits have adopted the two-part LRE test first articulated by the Fifth Circuit in *Daniel R.R. v. Sate Bd. of Educ.*, 874 F.2d 1036 (5th Cir. 1989).

The Court in *Daniel R.R.* recognized the LRE mandate as "one very specific directive prescribing the educational environment" for students with disabilities. 874 F.2d at 1044. "With this provision, Congress created a strong preference in favor of mainstreaming." *Id.* An evaluation of whether a placement meets the LRE requirement of the Act "must be weighed in tandem with the Act's principal goal of ensuring" a FAPE. 874 F.2d at 1045. The Fifth Circuit specifically rejected the *Roncker* test adopted by the Sixth and Eighth Circuits as necessitating "too intrusive an inquiry into the educational policy choices that Congress deliberately left to state and local school officials" (in determining the feasibility of providing any particular service in the regular education setting). It also rejected the test used by the district court as inappropriate in requiring, as a prerequisite to mainstreaming, that the student with disabilities be able to learn at approximately the same level as his non-disabled peers, as being too intolerant of educational differences in obtaining unequal benefits. Lack of mastery of regular education curriculum does not equate to lack of benefit.

The Court in *Daniel R.R.* created a two-part test for determining compliance with the mainstreaming requirement.

First, we ask whether education in the regular classroom, with the use of supplemental aids and services, can be achieved satisfactorily for a given child. *See* § 1412(5)(B). If it cannot and the school intends to provide special education or to remove the child from regular education, we ask, second, whether the school has mainstreamed the child to the maximum extent appropriate.

874 F.2d at 1048. A variety of factors are relevant to consider to conclude whether regular education can be satisfactory: (1) steps the school district has taken to accommodate the child in the regular classroom along a continuum of placement and support services; (2) comparing the academic benefits in the regular classroom with those in the special education classroom; (3) the child's overall educational experience in the regular classroom, including non-academic benefits; and (4) the effect on the regular classroom of the child's presence. *Id.* at 1048-50.

The first question is what accommodating steps have been taken (supplementary aids and services, or modifications) as required. If the answer is none, the inquiry ends because the school "is in violation of the Act's express mandate to supplement and modify regular education." Next, whether the school's efforts to accommodate are sufficient is examined. "The Act does not permit states to make mere token gestures to accommodate handicapped students; its requirement for modifying and supplementing regular education is broad." Although the requirement is broad, it is not limitless (the regular educator need not devote all of her time to one student or modify the program beyond recognition). Next, whether the child will receive an educational benefit from regular education is examined (focused on the student's ability to grasp the essential elements of the curriculum), however "academic achievement is not the only purpose of mainstreaming." The analysis must also include an examination of the child's overall educational experience. Finally, the analysis must consider what effect the student with a disability will have on the regular education environment and the education of other students (disruptive behavior or requiring inordinate teacher attention).

1. The Tenth Circuit Court of Appeals Applies Daniel R.R.

The Tenth Circuit Court of Appeals is the federal appellate court and governs decisions from Oklahoma, Kansas, New Mexico, Colorado, Wyoming, and Utah, plus those portions of the Yellowstone National Park extending into Montana and Idaho.

The Tenth Circuit adopted the *Daniel R.R.* LRE test in *L.B. ex rel. K.B. v. Nebo Sch. Dist.*, 379 F.3d 966, 977 (10th Cir. 2004). "Educating children in the least restrictive environment is one of the IDEA's most important substantive requirements." *Id.* at 976. "Thus, the LRE requirement is a specific statutory mandate. It is not, as the district court in this case mistakenly believed, a question about educational methodology." *Id.*

The Tenth Circuit in *L.B.* concluded that none of the *Daniel R.R.* factors is dispositive, nor are they exhaustive. *Id.* The court did "not decide whether costs of mainstreaming should be one of the factors considered in the LRE test" because cost was not an issue. The court adopted the *Daniel R.R.* non-cost factors only. *Id.*

The court rejected the argument that the mainstream placement for a preschool student created too much reliance on the aide. The child was succeeding in the mainstream placement with an aide and intensive ABA program, and was the most academically advanced child in the class. At the more restrictive placement she would be placed with students who functioned considerably lower. The child's primary needs involved improving her social skills and the mainstream program provided appropriate role models, had a more balanced gender ratio, and was "generally better suited to meet K.B.'s behavioral and social needs" than the more restrictive program. *Id.* at 978. Despite tantrums she was not disruptive in the regular classroom. The school district violated the LRE requirement of the IDEA and parents were awarded reimbursement for placement in a mainstream preschool program.

B. Factors for the IEP or 504 Team to Consider

- A. Ensure the placement decision is made by a properly constituted team.
- B. Ensure the analysis of LRE is based upon the *individual* student's presenting needs.
- C. Ensure the team conducts the placement analysis "from scratch" every year, rather than assuming a continuation of last year's placement.
- D. Discuss the continuum of placements available for consideration, beginning with mainstream placements.
- E. In the case of preschool students, community preschools may be appropriate, and should be considered.
- F. Begin with the *presumption* that the mainstream placement is the placement for the student. Consider whether the student can benefit from a mainstream placement. In this regard, discuss what supplemental aids and services may allow the student to benefit, both

- academically and socially, from education in the regular education classroom.
- G. If a mainstream placement is not appropriate, discuss why not. The team should consider whether the marginal benefits of a mainstream placement are outweighed by benefits gained in more intensive settings.
- H. In cases where a student's behavior is extremely disruptive, the team *may* consider the disruptive effects on other students of having the student in the regular classroom. In this regard, a discussion should occur as to whether providing supplemental aids and services may ameliorate the disruptive effects.
- I. Remember that a student is not required to fail in a regular education placement before a team can implement a more restrictive placement.
- J. Consider ways for the student to be involved in the mainstream curriculum, and not just the mainstream classroom.
- K. Consider the distance from potential placements to the student's home, and whether the placement is where the student would attend, if he or she were not disabled.
- L. Discuss the student's access to non-curricular and extracurricular activities, including lunch, recess, athletics, recreational activities, and clubs.
- M. Do not propose placements that educators believe to be inappropriate for a student simply because a parent requests that placement. While school districts have an obligation to provide parents an opportunity to participate in the IEP process, they have an independent obligation to provide the student a FAPE in the LRE. Acceding to parental demand is not an adequate defense to failure to provide the student a FAPE in the LRE.

III. SECTION 504 OF THE REHABILITATION ACT OF 1973

Section 504 of the Rehabilitation Act prohibits discrimination on the basis of disability by recipients of federal funds.

No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . .

29 U.S.C. § 794. Section 504 protects students with disabilities in public schools who are "qualified" if -

- of an age during which persons without disabilities are provided such services,
- of any age during which it is mandatory under state law to provide such services to persons with disabilities, or
- to whom a state is required to provide a free appropriate public education under the IDEA.

34 C.F.R. § 104.3(1). An individual with a disability is one who –

- has a physical or mental impairment which substantially limits one or more major life activities,
- has a record of such an impairment, or
- is regarded as having such an impairment.

34 C.F.R. § 104.3(j).

A. General Least Restrictive Environment Requirements

The U.S. Department of Justice regulations implement Section 504 and require school districts to provide a free appropriate public education to qualified students with a disability and also contains a number of provisions that require educational services be delivered in the least restrictive environment.

34 C.F.R. § 104.34 Educational setting.

(a) Academic setting. A recipient to which this subpart applies

shall educate, or shall provide for the education of, each qualified handicapped person in its jurisdiction with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person. A recipient shall place a handicapped person in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Whenever a recipient places a person in a setting other than the regular educational environment pursuant to this paragraph, it shall take into account the proximity of the alternate setting to the person's home.

(b) Nonacademic settings. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in 104.37(a)(2) [nonacademic and extracurricular activities and services], a recipient shall ensure that handicapped persons participate with nonhandicapped persons in such activities and services to the maximum extent appropriate to the needs of the handicapped person in question.

Note that Section 504 explicitly requires an evaluation or re-evaluation before any initial placement or any subsequent significant change in placement. 34 C.F.R. § 104.35(a). This provision applies to changes in placement to homebound instruction that requires compliance with the LRE requirements. *Lourdes (OR) Public Charter Sch.*, 57 IDELR 53 (OCR 2011). This may not apply to purely temporary medical conditions. *Boling (TX) Indep. Sch. Dist.*, 110 LRP 48659 (OCR 2009).

IV. VIRTUAL OR ON-LINE LEARNING

During the COVID-related school shutdowns, all students, including students with disabilities, received virtual instruction of some kind while they were at home and schools were closed. On-line instruction has been increasingly available to all students, including students with disabilities, even before the pandemic, reaching millions of K-12 learners. In 2011, OSEP funded The Center for Online Learning and Students with Disabilities to research making online learning accessible and identifies promising practices. More research is necessary

for appropriate policy planning and decision-making to understand how online learning affects students with disabilities in terms of educational and social outcomes in light of difficulties adapting IEPs to the online environment. This section will address LRE concerns with virtual instruction in the context of COVID suspension of in-person learning, and in the context of IEP Team placements in online programs.

The Office of Special Education Programs of the U.S. Department of Education guidance provides:

Prior to the COVID-19 pandemic, for schools that did not offer virtual instruction to all children, special education and related services provided virtually in the child's home was generally considered one of the most restrictive environments, as it typically provided little or not opportunity for the child to be educated with nondisabled peers. Virtual learning provided during the pandemic may be deemed less restrictive if it is available to all children and provides the child with a disability, meaningful opportunities to be educated and interact with nondisabled peers in the regular education environment.

Return to School Roadmap: Development and Implementation of Individualized Education Programs in the Least Restrictive Environment under the IDEA, 79 IDELR 232 (OSERS 2021).

Wyoming state law governs the provision of virtual education, program content, agreements between districts, and remote education, at W.S. § 21-13-330. Although it contains nothing specific to special education, it requires the school district to monitor student progress, grade level assessments, and to facilitate "necessary instructional support for the student and notify and assist any student not performing satisfactorily."

The requirements of the IDEA and Section 504 apply to students with disabilities who learn through virtual or online programs, whether placed by an IEP Team, receiving homebound services on a temporary basis, or enrolled in an online course of instruction. *Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak*, 76 IDELR 77 (OSERS 2020). "Virtual school" is a narrower term, referring to a public school that offers only virtual courses via computer technologies. *Dear Colleague Letter*,

68 IDELR 108 (OSERS/OSEP 2016). The IDEA and Section 504 apply to students with disabilities attending virtual schools to the same extent that they apply to students attending traditional schools. *Id.* "[T]he educational rights and protections afforded to children with disabilities and their parents under IDEA must not be diminished or compromised when children with disabilities attend virtual schools that are constituted as LEAs or are public schools of an LEA." *Id.* Child-find, FAPE and LRE rights extend with equal force to virtual schools. *Id.*

A full-time online program may be the least restrictive environment for a student when no other accommodations or supports can provide a FAPE in the LRE. *S.P. v. Fairview Sch. Dist.*, 64 IDELR 99 (W.D. Pa. 2014)(restrictive placement was necessary to meet the student's unique needs to remain in a dark, quiet room for 12-16 hours when he had a migraine, he was frequently absent from school, and other extraordinary supports to serve him in school failed).

A. Covid-Related Virtual Learning

When school closed due to COVID, in-person learning stopped and virtual learning began (or expanded). Students with disabilities continued to be entitled to a free appropriate public education in the least restrictive environment to the maximum extent possible and the rights and obligations of the IDEA and Section 504 were not waived, reduced or suspended. The right to be educated "with" peers without disabilities looked different but the principles remained strong and applicable. Students with disabilities were still entitled to the same amount of learning with peers without disabilities as when in school. For example, if a student was receiving instruction in the general education classroom for 50% of the day before the pandemic, they should still receive instruction the general education classroom for 50% of the day during school closures.

When schools closed their doors, they opened their computers and learning went virtual, whether synchronous or asynchronously provided. When students with disabilities were provided the same access to learning with their peers without disabilities, they continued to be educated in the least restrictive environment. If students without disabilities were provided less or different access to learning with their peers without disabilities, then least restrictive environment concerns arose. The provision of virtual or online education or distance learning is consistent with IDEA and Section 504 during emergency school closures. Supplemental Fact Sheet Addressing the Risks of COVID-19 in Preschool, Elementary, and Secondary Schools While Serving Children with Disabilities, 76 IDELR 104 (OSERS/OCR 2020). While some IEP services may be provided safely in person during a school

closure. when that is not feasible, online options may be appropriate. *Id.* "No one wants to have learning coming to a halt across America due to the COVID-19 outbreak, and the U.S. Department of Education (Department) does not want to stand in the way of good faith efforts to educate students on-line." *Id.*

Each IEP Team must ensure that when schools are closed each student's right to a FAPE in the LRE is preserved in each operational model, including distance learning or hybrid learning. Students with disabilities should participate in a virtual or hybrid learning model with their general education class as provided by the IEP with special education supports as needed. Students with disabilities should participate in a virtual learning model with their special education class as provided by the IEP. Related services must also be provided virtually to the maximum extent possible. Some services may not be possible to deliver virtually, such as nursing or physical therapy services.

Generally, when students with disabilities participate in online learning in a course with students without disabilities, that learning time can be considered regular classroom time. Online learning course content does not determine the educational environment.

Providing children with disabilities with online instruction that is the same as the remote instruction that their peers without disabilities receive is not 'a removal of children with disabilities from the regular educational environment,' because children with disabilities receive access to the same virtual instruction and materials as their peers without disabilities. 20 U.S.C. § 1412(5)(A).

Hernandez v. Grisham, 508 F.Supp.3d 893, 1000 (D. N.M. 2020). When most students are required to use remote learning, there is a rebuttable presumption that students with disabilities should likewise receive remote instruction." *Id*.

The distance learning model used during the COVID-19 pandemic is neither home instruction nor a homebound placement because it resulted from widespread school closures that affected all students, rather than a placement decision based on the educational or medical needs of a student with disabilities. To many parents it required them to assume a significantly increased burden to educate their children with disabilities at home, often with unacceptable outcomes.

B. IEP Team Online Placements

Whether due to school closings or the needs of the learner, on-line placements must always be made by the IEP Team based on the student's individual needs. Don't automatically change the least restrictive environment balance because of school closures. Placement decisions cannot be based on service delivery models or administrative convenience. Placements must always serve the child's right to a FAPE and to maximum learning with peers without disabilities. Remember, Section 504 also requires re-evaluations *before* any significant change of placement.

Available technologies can make a student's regular education environment accessible to the student as a live audio-video stream or on a storage device in order to maintain the LRE for a student unable to attend school in-person. *Southern York Cty. Sch. Dist.*, 55 IDELR 242 (SEA PA 2010). IEP Team consideration of available technological modifications to allow access to direct instruction for students unable to access in-person instruction is appropriate. *Id.* Robot avatars that transmit audio and video and move about the school under the control of the homebound student present promising links to the regular education environment, experiences, peers, and curriculum for virtual access to school, creating virtual attendance and socialization opportunities. *Warren Hills Reg'l High Bd. of Educ.*, 70 IDELR 57 (SEA NJ 2017)(IEP should have incorporated provision for robot to allow real-time interaction with teachers and classmates during periods of medical leave from school).

C. Parent Choice Online Placements

It appears that many virtual instructional programs are meant to be and are available based on parent choice. If the program is a public school or receives federal financial assistance then the IDEA and Section 504 requirements will apply, including LRE. Compliance issues will arise with virtual programs that categorically deny admission to students with disabilities, or create admission criteria that tend to exclude students with disabilities. "If virtual instruction is available to all students in an LEA, the LEA must ensure that a child with a disability whose needs can be met through virtual learning has an IEP implemented that provides all the services and supports necessary for the child to receive FAPE through such service delivery." *Return to School Roadmap: Development and Implementation of Individualized Education Programs in the Least Restrictive Environment under the IDEA*, 79 IDELR 232 (OSERS 2021).

The traditional LRE analysis assumes that education will generally take place in a school building with the opportunity for students with disabilities to be educated alongside their peers without disabilities. There will certainly be disputes about whether virtual programs afford education with students without disabilities, and about the quality and quantity of inclusion in online education programs. There will also certainly be cases about the clash between the right to a FAPE, the right to LRE, and the right to equal access to school choice options. Questions will arise such as whether students with disabilities can be encumbered in access to virtual instruction by additional processes or barriers to admission different than those for students without disabilities? Does parent choice affect the student's right to education in the least restrictive environment or the right to a FAPE? Is it fair to anyone to expect that every school choice option (charter schools and virtual schools) has or can build the capacity to effectively serve all learners? Does online learning with peers without disabilities provide the same academic and social benefits embedded in the LRE preference for students in a school building? The answer may vary depending on the particular needs of the student and the particular features of the online program. What about expecting increased responsibilities of parents to facilitate online learning or serve as the "learning coach"? There is no authoritative guidance on these questions to provide certainty in proceeding, except that adherence to the individualized FAPE and LRE principles of IDEA and Section 504 is expected in every public placement. Before placement in an online program the IEP Team must determine what the student needs to receive a FAPE and how or whether it can be delivered as the LRE in the program under consideration.

D. Home Instruction or Homebound Instruction

The IDEA uses the term "home instruction" to describe a placement on the continuum of alternative placements considered extremely restrictive because it restricts learning with peers without disabilities. Home instruction is not to be confused with "homebound instruction" which is "a temporary excusal from school due, generally, to a temporary illness [or] injury and available to all student[s] as a regular education accommodation." *Abington Heights Sch. Dist.*, 112 LRP 16163 (SEA PA 2012). A placement at home for instruction of an IDEA or Section 504 eligible student is made by the IEP or Section 504 Team based on a child's individual needs. This placement is also not to be confused with "homeschool" which is a unilateral parent placement at home and considered a private school placement. Homebound services are most properly referred to as the provision of home instruction to students who are confined to or placed at home due to medical conditions or a placing authority such as a court. Home

instruction is used as the term to describe an IEP Team placement that provides education and related services to a student in his or her home.

Wyoming state law presents a dangerous option that could result in exclusion from school altogether for children with disabilities. Denial of admission to school for any child with a disability, no matter the nature or severity, is entirely incompatible with the core constitutional protections (equal protection and due process) embedded in the IDEA and Section 504. However, Wyoming state law contains the following provision, at W.S. § 21-4-307:

Denial of admission to school

- (a) The board of trustees of any school district within the state may deny admission to any child who:
 - (i) Has completed the twelfth grade; or
- (ii) Has such a mental or physical disability that based upon a physician's certificate the board believes such child could not reasonably benefit from the programs available or the attendance of such child would be inimical to the health, safety, or welfare of other pupils; provided, that the board shall make the best possible provisions for suitable and adequate education of such child in accordance with the laws of this state.

Always consult knowledgeable legal counsel before relying on this provision to exclude any child with a disability from school. This is very dangerous territory!

Placement of a student on an IEP or eligible for an IEP into home instruction will raise serious LRE concerns because it is typically provided away from *any* peers and in isolation. The exception will be when instruction is provided virtually with peers without disabilities. It is the most restrictive type of placement. Home instruction should only be used as a last resort when no supplementary aids or services can be provided to support education with peers. *DOE Commentary to Subpart E*, § 300.551 (1997 IDEA Reauthorization).

Homebound services are considered to be among the least advantageous educational arrangements, to be used only when other less restrictive options are not suitable for a student with severe health restrictions. *State of Hawaii v. Katherine D.*, 727 F.2d 809, 818 (9th Cir. 1983).

E. Wyoming's Homebound Services Law

Wyoming Statutes at §21-4-402 (2020) governs the provision of homebound services and provides:

Instruction for hospitalized or homebound pupils

- (a) The board of trustees of each school district shall offer homebound instruction for each pupil in the district who is hospitalized or homebound for more than one (1) week because of injury or illness.
- (b) The board shall also offer homebound instruction for each pupil in the district who is hospitalized or placed in a state accredited or state certified treatment facility for more than one (1) week in a hospital or facility located in another Wyoming school district because of injury or illness. The board shall either provide instruction directly or contract with the school district in which the pupil is hospitalized or placed in a facility to provide this instruction. This subsection does not apply to pupils who:
- (i) Are hospitalized or placed due to a mental, physical or psychological disability and who are receiving services under W.S. 21-2-501 [entitled to a FAPE]; or
- (ii) Have been placed in a psychiatric residential treatment facility who are receiving educational services pursuant to W.S. 21-13-315 [court-ordered private residential treatment facilities and group homes in Wyoming] or 21-13-336 [psychiatric residential treatment facilities determined medically necessary].

This provision by its terms *does not apply* to students with an IEP or Section 504 Plan and instead appears to defer to IEP or 504 Team decision-making on homebound instruction for these learners. Students who are medically unable to attend school should be considered for initial or re-evaluation under the IDEA and/or Section 504 to the extent they require specialized instruction or equal access to educational services and programs.

Consequently, for IDEA and Section 504-eligible students, placement into home instruction requires adherence to both the FAPE and LRE requirements of those laws. Only if the home instruction placement is the least restrictive environment is that placement proper and justifiable. In other words, only if there is no aid, service or accommodation that could be provided to allow the student to attend school can home instruction be considered the least restrictive environment.

It has long been the Department's position that when a child with a disability is classified as needing homebound instruction because of a medical problem, as ordered by a physician, and is home for an extended period of time (generally more than 10 consecutive school days), an individualized education program (IEP) meeting is necessary to change the child's placement and the contents of the child's IEP, if warranted.

Questions and Answers on Providing Services to Children with Disabilities During the H1N1 Outbreak, 53 IDELR 269 (OSERS 2009). The decision of whether to place a student with a disability on home instruction is made by the IEP Team. Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak, 76 IDELR 77 (OSERS 2020). While students with disabilities have the same right to homebound services as students without disabilities under the same circumstances, school districts have specific and enhanced obligations towards students with disabilities. *Id.* Application of standard minimum hours of instruction provisions that limit the scope or duration of homebound or home instruction to students with disabilities may run afoul of the IDEA and Section 504. Traverse City (MI) Area Pub. Schs., 59 IDELR 144 (OCR 2012); and Middleborough (MA) Pub. Schs., 110 LRP 57341 (OCR 2010).

Homebound placements are the most restrictive placements and should end as soon as the condition requiring them no longer exists. Plans to return the student to a less restrictive setting as soon as possible should always be made, early and often.

V. UNILATERAL PARENT CHOICES

A. Home-based or Homeschool Instruction

Homeschooling is recognized as the right of every parent. This right was recognized in a U.S. Supreme Court case in a constitutional challenge by Amish parents to Wisconsin's compulsory attendance law. The court held that sincerely held religious beliefs protected by the First Amendment's Free Exercise Clause prevent a state from compelling instruction. *Wisconsin v. Yoder*, 406 U.S. 2015 (1972).

Wyoming Statutes define homeschooling in the compulsory attendance section to exempt from attendance students provided "a home-based educational program." W.S. § 21-4-101(a)(v) provides:

A home-based educational program means a program of educational instruction provided to a child by the child's parent or legal guardian or by a person designated by the parent or legal guardian. An instructional program provided to more than one (1) family unit does not constitute a home-based educational program.

Home-schooled or home-based students are generally considered private school students in application of the IDEA in accordance with their designation under state law. 71 Fed. Reg. 46,594 (2006). Wyoming Statutes § 21-4-101(a)(iii) define "private school" as including home-based educational programs. Consequently, homeschool students are only entitled to a proportional share of school district funds to provide special education like other voluntarily enrolled private school students. This provision of what is termed "equitable services" (read "FAPE-light") is *not* the product of IEP Team decision-making or required to be based on student's individual needs, but instead is based on school district determinations, in consultation with the private provider, of the proportional-share services to be provided. 20 U.S.C. § 1412(a)(10)(A). Students voluntarily enrolled in private schools do not have an individual right to receive some or all of the special education and related services they would receive if enrolled in a public school. *Id.* And, the LRE requirements do not apply to voluntarily enrolled private school students.

B. Private School Placements Including Homeschool Instruction

1. Students Placed by Public Schools in Private Schools

Students placed by a public school into a private placement are entitled to all of the protections of the IDEA, including a FAPE in the LRE. 20 U.S.C. § 1412(a)(10)(B). Consequently, public school placements into private programs must meet LRE standards.

2. Students Placed by Parents in Private Schools

Students placed by their parents in private schools are entitled to the child-find protections of the IDEA, but not to a FAPE in the LRE. 20 U.S.C. § 1412(a)(10)(A). These are voluntarily enrolled private school students. Such students are only entitled to a proportional share of school district funds to provide special education, termed "equitable services.". This "FAPE-light" is *not* the product of IEP Team decision-making or required to be based on student's individual needs, but instead is based on school district determinations, in consultation with the private provider, of the proportional-share services to be provided. Consequently, unilateral private school placements by parents need not meet LRE standards.

When a home-schooled student is considered placed in a private school program under state law, school districts must provide child-find protections, and equitable participation in the services it has determined to make available under a "services plan." *Questions and Answers on Serving Children Placed by Their Parents in Private Schs.*, 111 LRP 32532 (OSEP 2011).

3. Extending Virtual COVID-Related Instruction

Some students with disabilities have thrived with distance learning models and parents (as well as teachers) may find it an attractive option to extend even after schools reopen. Sometimes the return to in-person instruction is burdened by mental health concerns that have arisen or been exacerbated by the long absence from school like anxiety. For IDEA and Section 504-eligible students, these decisions on placement remain the purview of the Team based on the learner's individual needs. Social, emotional, behavioral and transition skills may depend on more intensive, real-time interaction with peers than afforded through distance learning. The student's needs must drive this decision, be based on evaluation data, and be well-documented. Long-term virtual placements require consideration

and reconsideration of the student's needs for education in the least restrictive environment in order to prepare each student for success and independence in an integrated world after high school.

LRE: VIRTUAL SETTINGS AND PARENT CHOICES

Wyoming Department of
Education
Special Education Law Series
March 10, 2022

Amy J. Goetz



PRESUME FULL INCLUSION OF ALL STUDENTS

Expect EffectiveSupplementary Aids and
Services are Provided



LRE IS BALANCED BY FAPE

Both Rights in the Individuals with Disabilities Education Act and Section 504



LRE IS EVERYWHERE

Extracurriculars

Non-academic Activities

Lunch

Recess

Counseling

Athletics

Transportation

Clubs



LRE IS EVERYTHING

Access to Peers
Access to Curriculum



EDUCATION ESSENTIALS

- Equal Opportunity
- Full Participation
- Independent Living
- Economic Self-Sufficiency



DANIEL R.R.

- Regular Classroom with Supplemental Aids and Services Satisfactory?
- Mainstreamed to the Maximum Extent Appropriate?



L.B. 10TH CIRCUIT

"Educating children in the least restrictive environment is one of the IDEA's most important substantive requirements."



SECTION 504

Ensures FAPE
Ensures LRE
Equal Access
Equal Treatment
Equal Benefit
Equal Participation



VIRTUAL LEARNING

IDEA and Section 504 Apply

- Online Programs
- Home Instruction
- Temporary Homebound
- Parent Choice
- COVID Distance Learning



PARENT CHOICE

IDEA and Section 504 Apply

- Home-based or Homeschool
- Charter Schools
- Extended Virtual Instruction



PRIVATE SCHOOLS

LRE Does Not Apply to Parent Placements

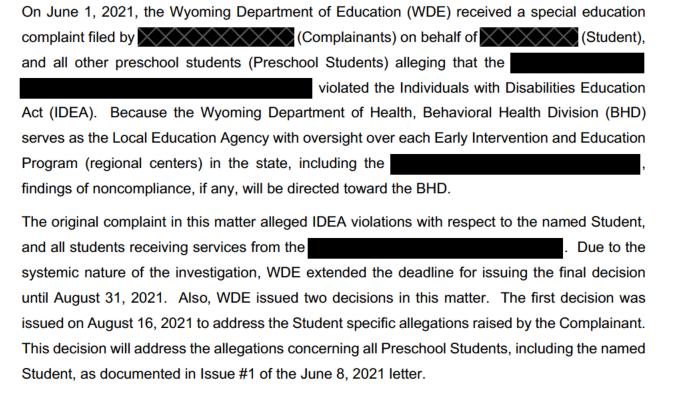
LRE Does Apply to District Placements



WYOMING DEPARTMENT OF EDUCATION SPECIAL EDUCATION PROGRAMS DIVISION SPECIAL EDUCATION COMPLAINT INVESTIGATION

Complainants:		Complaint #: C-019-21
Respondents:	Behavioral Health Division Wyoming Department of Health 122 West 25 th Street 200 West Suite B Cheyenne, Wyoming 82002	COMPLAINT DECISION AND ORDER FOR CORRECTIVE ACTION
Decision Date:	August 31, 2021	

Introduction:



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In compliance with the IDEA, Federal Regulations, and the Wyoming Department of Education Chapter 7 Rules, WDE issues this report containing Findings of Fact, Conclusions, Decision and Order for Corrective Action.

Complaint Issues:

WDE investigated the following Student specific issues based on the content of the complaint:

- 1. Allegations of systemic noncompliance affecting the named Student and other students attending the Center's programs:
 - a. Whether the BHD, through the Center, denied the students a Free Appropriate Public Education (FAPE) in violation of 34 C.F.R. §§300.17 and 300.101.
 Specifically,
 - i. Whether the Center placed students in the least restrictive environment in which their educational and behavioral needs could be met providing students the opportunity to be educated with nondisabled peers to the maximum extent appropriate consistent with 34 C.F.R. §§300.114 through 300.117; and
 - ii. Whether the Center proposed and provided placements without cost to the parents of students attending the Center.
 - b. Whether the BHD, through the Center, failed to provide students with the procedural protections required by IDEA, including,
 - i. Whether the Center comprehensively evaluated students in order to identify all educational and behavioral needs as required by 34 C.F.R. §§300.301 through 300.311, including the use of appropriate assessments and qualified evaluators.
 - ii. Whether the Center provided special education services and supports, including the inclusion provider, in conformity with the students' IEPs as required by 34 C.F.R. §§300.17, and 300.320 through 300.324.

Investigatory Process:

- WDE reviewed the following records:
 - The original letter of complaint and all supporting documentation;
 - A detailed description of the BHD's position regarding each allegation in the complaint;
 - Special education records for all students enrolled in the Center;

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- o The Parent and Teacher Child Development Questionnaire Google form; and
- Follow up documentation provided by the Center.
- WDE interviewed the Complainant, the Special Education Director, and the Special Education Teacher.
- WDE consulted with vision and hearing professionals to clarify student records where vision and/or hearing are noted as concerns.
- WDE provided the BHD, the Center, and Complainants the opportunity to submit additional information for consideration throughout the investigation.

Applicable Federal Regulations, State Statutes or Rules:

34 C.F.R. §300.17	Free Appropriate Public Education
34 C.F.R. §300.101	Free Appropriate Public Education
34 C.F.R. §§300.114-300.117	Least Restrictive Environment
34 C.F.R. §§300.301-300.311	Evaluations and Reevaluations
34 C.F.R. §§300.320-300.324	Individualized Education Programs

Wyoming Department of Education Rules, Chapter 7

Relevant Time Period:

Pursuant to 34 C.F.R. §300.153(c), WDE has the authority to investigate alleged violations of IDEA that occurred not more than one year prior to the date the complaint was received. In light of this limitation, the investigation and any findings of noncompliance will be limited to the period commencing June 2, 2020 through June 1, 2021. Additional information beyond this timeframe was considered for the purpose of fully investigating the complaint. Findings of noncompliance shall be limited to the one-year time period.

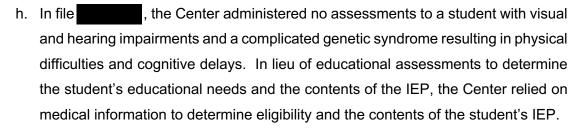
Findings of Fact:

1. WDE requested that the Center provide identification numbers and electronic access to student files for all students attending the Center during the time period relevant to this complaint investigation. The Center provided the unique identifiers for 38 students (30 students attending the Records for all 38 students were reviewed electronically. All student records were reviewed to thoroughly examine the Center's practices. Some student records preceded the one-year investigatory window, as initial evaluations may have occurred as early as 2019 for students still attending the Center during the last year. Findings of

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- noncompliance are limited to student records during the one-year time period of this investigation.
- 2. The following findings are specific to whether the Center conducted comprehensive evaluations by qualified providers:
 - a. Two files were incomplete and did not contain sufficient information for the purpose of this investigation .
 - b. The Center routinely relied on a Child Development Parent Questionnaire and a Teacher Questionnaire. The Center provided links to the questionnaires in the form of an online Google document. Neither of these tools appeared to be norm referenced or standardized. Both questionnaires asked a series of background and observational questions. Neither questionnaire is scored, nor does it reference what type of responses would represent typical development.
 - c. The Battelle Developmental Inventory-Second Edition (BDI-2) was used in 35 files to determine eligibility for special education services under IDEA. The BDI-2 was utilized regardless of area of suspected disability.
 - d. In 20 files, the BDI-2 was the only norm referenced, standardized measure used to determine eligibility for special education service and the educational needs of the students.
 - e. In 13 files, the BDI-2 was used in conjunction with the Goldman Fristoe Test of Articulation to determine eligibility for special education service and the educational needs of students suspected of having an articulation disorder.
 - f. In two files, when the parents expressed concerns regarding autism or requested further assessments, the parents were provided a list of private psychologists to conduct a diagnostic evaluation. Both students were diagnosed as students with autism based on the information provided in the privately obtained evaluations
 - g. In file standardized, the Center administered the BDI-2 as the only norm referenced, standardized assessment. The student was found to be eligible in the category of Developmental Delay. Parents had long standing concerns regarding the student's cognitive processing and development and sought an independent neuropsychological evaluation from a private provider. The private evaluator diagnosed attention deficit disorder and other processing disorders. There is no indication in the file that the Center considered the results of this evaluation.

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- i. In file ______, the Center documented a medical diagnosis of Downs Syndrome.
 In evaluating the Student for initial eligibility, the Center only administered the BDI2. The Center determined the Student was eligible in the category of cognitive impairment based on the BDI-2 with no other norm referenced standardized
- assessments.
 j. The Center noted concerns regarding several students' cognition either through the screening process from parents, previous Part C providers, current preschool providers, or low scores on the BDI-2. No additional assessments were conducted

to determine the educational impact of the cognitive concern or rule out other types

of disability that affect cognition

k. In 10 files, the Center documented that students had either failed the vision and/or the hearing screening, or screening attempts were unsuccessful. Those files typically indicated, "refer out," meaning that the parent was informed of the screening results with a recommendation that the parent seek additional assessments from a private provider

In file to an earlier eye injury, the parent expressed concern regarding the student's vision and ability to see clearly, and the student failed the vision screening. After administering the BDI-2 and the Goldman Fristoe Test of Articulation, the Center determined the student was eligible in the category of Speech/Language Impairment for language and articulation. No additional assessments were conducted to determine the educational impact of the visual impairment or rule out a visual impairment as the eligibility category.

m. In file _____, the Center documented that the student has a hearing impairment, is aided in both ears, and that the parent expressed concern regarding the effect of the student's hearing impairment on language development. After administering

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- the BDI-2, the Center determined the student was eligible in the category of Speech Language Impairment. No additional assessments were conducted to determine the educational impact of the hearing impairment or rule out a hearing impairment as the eligibility category.
- n. In file ______, the Center documented that the student failed the vision screening on two occasions and the parent expressed concern about the student's vision. The Center recommended the parent obtain a private vision evaluation, but the record indicates that the parent did not follow through with an eye doctor appointment. No additional assessments were conducted to determine the educational impact of the possible visual impairment or determine whether the student needed services in the area of visual impairment in order to receive FAPE.
- o. The Center indicated in its response to this complaint that eight staff members were specifically trained to administer the BDI-2. The files reviewed indicated that the BDI-2 was administered by one of the trained staff members.
- 3. The following findings are specific to whether the Center provided services and supports consistent with IEPs, including the inclusion provider:
 - a. 23 files indicated that the Center provided an inclusion provider "as needed." During an interview with the Director, she indicated that the inclusion provider served in the capacity of a classroom paraprofessional, and there were no records to determine the amount of time the inclusion provider served any specific student. During an interview with the Special Education Teacher, she acknowledged that no inclusion provider services were provided to students at ________, as the inclusion provider worked only four days per week and was not available on the day scheduled to provide service at ______.
 - Eight files indicated that the Center provided a Speech Language Pathology aid "as needed." There is no indication of the actual amount of service provided to students.
 - c. 18 files indicated that students would be "removed occasionally" from the regular preschool classroom environment for services. There is no indication of the frequency or duration of the time the student would be removed from the regular preschool environment. When interviewed, the Director and Special Education Teacher indicated that the individual service providers determine when and how much a student is removed from the preschool classroom for service.

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- d. Two files indicated that Extended School Year services would be provided "by appointment," with no amount or frequency listed on the student's IEPs
- 4. The following findings are specific to whether the Center placed students in the least restrictive environment without cost to the parents:
 - a. In response to this complaint, the BHD indicated that IEP teams make placement decisions.
 - b. The Director provided the following clarification regarding LRE:

In	children receiving Part B services are offered
an educational placement at	
, at the IEP i	meeting at no cost to the family. If the parent
turns down the spot at the	to attend a different
center of their choosing,	does not pay tuition at that childcare center
but provides special educat	ion services at the center where the child
attends preschool.	

- c. The Director noted that special education services were provided at the Center, and at three community preschools including

 The Director further noted, "All of these centers, meet the requirements for LRE as there is more than 50% enrollment of typically developing peers."
- d. In its response to the complaint, the BHD indicated that 13 students received special education service in community preschools. The Center paid no tuition on behalf of these students.
- e. The Center provided services to three students in their homes. Two of the three students served at home were the result of COVID concerns and parent choice. The third student was considered medically fragile, warranting services in the home.
- f. During an interview as part of this investigation, the Director reiterated that it is contrary to best practice to have preschool students attend school more than three hours in a day. The Director stated: "Pre-school FAPE is considered half day." As a result of this belief, no students were offered more than a half-day placement four mornings per week regardless of educational need.
- g. It is noted that no IEPs indicated that students were provided with services beyond the four morning per week preschool schedule at the Center during the school year.

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h. It is noted that no IEPs indicated that students were provided with transportation as a related service. Although the Director indicated that transportation would be provided to students "whose families indicate a need," no IEP contained transportation as a related service.

Conclusions:

- 1. The overarching purpose of the IDEA is to ensure that students with a disability have available to them a Free Appropriate Public Education (FAPE), including special education and related services that meet the unique needs of individual students. 34 C.F.R. §300.1.
- 2. The FAPE standard was set by the hallmark United States Supreme Court decision in the Rowley case. The Court held that an IEP must provide a "basic floor of opportunity." Determining the "contours of an appropriate education must be decided on a case by case basis." Board of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley, 553 IDELR 656 (1982).
- 3. The Rowley Court established a two-part test to decide whether FAPE was provided:
 - a. Has the state (i.e. public agency) complied with the procedures set forth in the IDEA?
 - b. Is the IEP developed through IDEA's procedures reasonably calculated to enable the child to receive educational benefit?
- 4. The Supreme Court clarified the FAPE standard in the *Endrew F.* case. The Court made it clear that "[t]o meet its substantive obligations under the IDEA, a school must offer an IEP reasonably calculated to enable the child to make progress appropriate in light of the child circumstances." The Court rejected the "merely more than de minimus" standard for measuring appropriate progress. "After all, the essential function of an IEP is to set out a plan for pursuing academic and functional advancement." The instruction offered must be "specially designed" to meet a child's "unique needs" through an "[i]ndividualized education program." Endrew F. v. Douglas County Sch. Dist. RE-1, 69 IDELR 174 (2017).
- Under the IDEA, the primary vehicle for providing FAPE is through an appropriately developed IEP that is based on the individual needs of the child. *Dear Colleague Letter*, 115 LRP 53903 (OSERS 2015).
- 6. The content of a child's IEP, especially the initial IEP, is determined through the comprehensive evaluation process. 34 C.F.R. §300.304(b). The IDEA defines "evaluation" to mean the procedures used to determine whether a child has a disability and the nature and extent of the child's need for special education and related

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- **services.** (Emphasis added.) *34 C.F.R.* §§*300.301 and 300.304.* An evaluation under the IDEA serves two purposes: identifying students who need specialized instruction and related services because of an IDEA-eligible disability; and helping IEP teams identify the special education and related services a student requires. *71 Federal Register 46548.*
- 7. In conducting a comprehensive evaluation to determine eligibility under Part B of IDEA, the Center shall "not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child." 34 C.F.R. §300.304(b)(2). The Center must ensure that a student is "assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities." 34 C.F.R. §300.304(c)(4). Also, the Center must ensure that assessment tools and strategies that provide relevant information that directly assists the team in determining the educational needs of the child. 34 C.F.R. §300.304(c)(7).
- 8. The BHD's Early Intervention and Education Program Policy Number EIEP-21-004 provides a list of 24 approved assessments for the determination of eligibility under IDEA, and it requires the use of a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child. The Center is prohibited from using any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and the appropriate educational program for the child. (Emphasis added.)
- 9. The BHD provided guidance on comprehensive evaluations and eligibility requirements in February 2018. In relevant part, the guidance states:

Eligibility is a two-prong test. According to Wyoming Department of Education Chapter 7(c)(i) and consistent with 34 C.F.R. §300.8, to be eligible for special education and related services under the IDEA a child must meet the criteria for one (1) or more of the disability categories listed in this section, and the disability must adversely affect the student's educational performance such that the student needs special education, as defined in 34 C.F.R. §300.39. A child may have the required test scores, however, if the second prong of educational need is not documented the child is not eligible for special education services.

The determination of educational need is required as part of the eligibility process. Comprehensive evaluations must be completed to determine all areas of need. The eligibility determination and evaluation report must contain documentation of educational need. This documentation may be difficult when the team has not completed a comprehensive enough evaluation to determine

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the true education need which, in turn, can be used to determine which eligibility category may be most appropriate.

. . .

If the team does not have enough information to confidently make an eligibility determination, they may not have conducted a comprehensive evaluation and need to further evaluate to determine if there are any lingering educational concerns. If additional evaluations are required for student eligibility that are outside of the expertise of CDC staff, the CDC is responsible to pay for those evaluations. (Emphasis added.)

- 10. In 20 files, the BDI-2 was the only norm referenced, standardized measure used to determine eligibility and the contents of a student's IEP. By using the BDI-2 as the only standardized measure of a Student's functioning, the Center failed to comply with the BHD's policy and the IDEA. The BDI-2 is only one standardized measure with different domains, and it cannot be relied on as the sole criterion in order to determine special education eligibility and the educational needs of a student.
- 11. In 15 files, concerns and/or low scores were documented regarding the student's cognitive function. It is the obligation of the Center to conduct comprehensive evaluations to address all areas of suspected disability and determine the contents of a student's IEP. The Center failed to conduct any additional assessments to determine what, if any, educational needs existed as a result of the lower levels of cognitive function or if the students met criteria in any other disability category.
- 12. According to WDE Special Education Rules, a comprehensive evaluation shall include, as needed, evaluative services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services. Wyoming Department of Education Rules, Chapter 7, Section 4(b)(i)(C).
- 13. The practice of referring students to private psychologist at the expense of the parent when autism is suspected, or to physicians for vision or hearing concerns at the expense of the parent is contrary to IDEA, Wyoming rules, and BHD guidance. It is the sole responsibility of the Center to conduct a comprehensive evaluation in all suspected areas of disability, or to provide a comprehensive evaluation at no cost to the parent if the Center lacks specific expertise necessary to competently determine eligibility and the educational needs of the student. *C.B. v. Hellgate Elementary Sch. Dist.*, 50 IDELR 241 (9th Cir. 2008). It is important to note that WDE has outreach staff with expertise in vision and hearing to consult with the Center as needed, and other state-funded resources exist to provide vision and hearing assessments without cost to the Center in order to comprehensively evaluate students with hearing or vision impairments.

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- 14. With respect to whether qualified staff were utilized to administer the BDI-2, a professional trained to administer the test is viewed as competent to administer any portion of the test. The author of the BDI-2 does not require that different domains be administered by different staff. WDE concludes that any of the trained staff listed in the BHD's response to the complaint are competent to administer all domains of the BDI-2.
- 15. Regarding the allegation that services, notably the inclusion provider, were not delivered consistent with the IEPs, WDE finds the practice of denoting "as needed" for the amount of service or support in a student's IEP is contrary to the requirements of IDEA. The amount, frequency, and duration of service is a required component of every student's IEP. 34 C.F.R. §300.320(a)(7). The use of "as needed" fails to inform the parent of the amount of service a student needs in order to receive FAPE. Consistent with IDEA, the amount and frequency of each service or support in the IEP must be documented.
- 16. The IDEA, federal regulations, Wyoming Chapter 7 Rules, and BHD guidance require that FAPE be provided in the LRE in order to meet a student's individual needs. It is contrary to the IDEA to have a one-size-fits all approach to LRE. It is also inconsistent with the IDEA to think of LRE as a particular location where the LRE is provided for all students. LRE must be an individualized determination based on the unique needs of a particular student. 34 C.F.R. §§300.114 300.117.
- 17. It is the U.S. Department of Education's long-standing requirement that in determining the placement of a preschooler with a disability, public agencies must ensure that each child's placement is made in conformity with the LRE. The public agency responsible for providing FAPE to a preschool child with a disability must make available the full continuum of alternative placements, including instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions, to meet the needs of all preschool children with disabilities for special education and related services. 34 C.F.R. §300.115; Dear Colleague Letter, 58 IDELR 290 (OSEP 2012).
- 18. In 2017, the U.S. Department of Education, Office of Special Education Programs, updated its guidance as follows:

If there is an LEA public preschool program available, the LEA may choose to make FAPE available to a preschool child with a disability in the LEA's public preschool program. While the number of public pre-kindergarten programs has increased, many LEAs do not offer, or offer only a limited range of, public preschool programs, particularly for three-year-olds. In these situations, the LEA must explore alternative methods to ensure that the LRE requirements are met for each preschool child with a disability. These methods may include: (1) providing opportunities for the participation of preschool children with disabilities in preschool

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programs operated by public agencies other than LEAs (such as Head Start or community-based childcare); (2) enrolling preschool children with disabilities in private preschool programs for nondisabled preschool children; (3) locating classes for preschool children with disabilities in regular public elementary schools; or (4) providing home-based services. If a public agency determines that placement in a private preschool program is necessary for a child to receive FAPE, the public agency must make that program available at no cost to the parent. *Dear Colleague Letter: Preschool Least Restrictive Environments*, 69 IDELR 106 (OSEP 2017).

19. On August 23, 2017, the BHD instructed its Centers as follows, in relevant part:

Children should not be removed from the regular education setting to attend a CDC preschool program if appropriate programming can take place within the child's regular preschool program.

. . .

Classrooms with same age peers without disabilities should be the placement of first consideration and any removal to a more restrictive environment must include the justification why the student's disability requires removal. Any removal not based on the student's disability is a violation of the provision of FAPE.

- 20. The Director's statement that students are only offered an educational placement at the Center at no cost to the family is directly contrary to the IDEA's LRE requirement to consider and make available a full continuum of placements.
- 21. Once the IEP team documented that the student's placement was a community preschool setting and that services and supports would be provided in the community preschool, the community preschool placement is where the student receives FAPE in the LRE. Therefore, it must be provided without cost to the parent. *Dear Colleague Letter: Preschool Least Restrictive Environments*, 69 IDELR 106 (OSEP 2017); *Letter to Anonymous*, 50 IDELR 229 (OSEP 2008).
- 22. The fact that the Center offered only one placement option rather than making available a full continuum of placement options is a violation of a student's right to receive FAPE in the LRE. The Center may be the LRE for some students after consideration of the full continuum, but it cannot be the *only* placement option considered for all students. This practice represents a fundamental misunderstanding of FAPE and LRE requirements. It is clear that this practice, in conjunction with the practice of determining a student's service based on the four day per week, morning only structure of the Center's typical schedule, is contrary to the IDEA's mandate to individualize the contents of a student's IEP to meet a child's unique educational needs.

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23. The Center acknowledged that it does not pay tuition for any student to attend a community preschool option. This is particularly troubling in light of the long-standing OSEP guidance and the directives of the BHD in its written guidance. When an IEP identifies a placement where IEP services and supports are provided, that placement must be delivered at public expense without cost to the parent.

Decision:

- 1. Whether the BHD, through the Center, denied the students a Free Appropriate Public Education (FAPE) in violation of 34 C.F.R. §§300.17 and 300.101. Specifically,
 - a. Whether the Center placed students in the least restrictive environment in which their educational and behavioral needs could be met providing students the opportunity to be educated with nondisabled peers to the maximum extent appropriate consistent with 34 C.F.R. §§300.114 through 300.117.
 - WDE finds the BHD to be in violation of providing services consistent with the Least Restrictive Environment provisions of IDEA.
 - b. Whether the Center proposed and provided placements without cost to the parents of students attending the Center.
 - WDE finds the BHD in violation. The Center does not pay any tuition for students served in community preschool environments.
- 2. Whether the BHD, through the Center, failed to provide students with the procedural protections required by IDEA, including,
 - a. Whether the Center comprehensively evaluated students in order to identify all educational and behavioral needs as required by 34 C.F.R. §§300.301 through 300.311, including the use of appropriate assessments and qualified evaluators. WDE finds the BHD in violation. In most evaluations, the BDI-2 was the only measure used to determine eligibility.
 - b. Whether the Center provided special education services and supports, including the inclusion provider, in conformity with the students' IEPs as required by 34 C.F.R. §300.320.

WDE finds the BHD in violation. There are no records to support a conclusion that services listed as "as needed" were delivered to students.

Corrective Action Plan:

1. By September 20, 2021, the BHD shall send a redacted copy of this decision as provided by WDE to the parent(s) of all students currently enrolled in the Center and those students

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- whose identification numbers were provided to WDE as part of this investigation. The BHD shall provide WDE with verification of compliance and the full list of names to whom the decision was sent by September 27, 2021.
- 2. The BHD shall cease the practice of making eligibility determinations based on a single norm referenced standardized assessment to determine eligibility and the contents of a student's IEP, contrary to IDEA, WDE's Chapter 7 Rules, and BHD policy. No single assessment or measure shall be utilized as the sole criterion in conducting comprehensive evaluations in order to determine eligibility or the contents of a student's IEP.
- 3. The BHD shall provide WDE with a written assurance that it has ceased the practice of using a single norm referenced standardized assessment to determine eligibility and the contents of a student's IEP throughout the regional developmental preschool system and centers under contract with the BHD. This written assurance shall be provided to WDE by September 27, 2021.
- 4. By September 20, 2021, the BHD shall provide a written directive to all regional developmental preschools and contracted centers to cease the practice of directing and/or recommending that parents obtain private evaluations, including hearing or vision evaluations, when needed in order to determine eligibility for special education or the educational needs of the students. The BHD shall provide WDE with verification of compliance and a copy of the written directive by September 27, 2021.
- 5. The BHD shall cease the practice of limiting placements to the regional centers under contract with the BHD. Effective immediately, the BHD shall provide a full continuum of options, including other preschool environments at no cost to the parent, in which to serve students in the least restrictive environment. The BHD shall provide a written directive to all regions and contracted centers to immediately commence consideration of a full continuum of least restrictive options for placement of students with disabilities, including full day placements in other community preschools when needed in order to provide FAPE in the least restrictive environment. The BHD shall provide WDE with verification of compliance and a copy of the written directive by September 27, 2021.
- 6. All such placements in which students are provided FAPE shall be at no cost to the parent. The BHD shall reimburse all parents for costs associated with placement of the students in community preschools where services are provided in order for the students to receive FAPE. The requirements for reimbursement are as follows:
 - a. The BHD shall provide a letter to the parents of all students from all regions either currently served by one of the child development centers under the supervision of

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the BHD in tuition-based community preschools or previously served by one of the child development centers under the supervision of the BHD in tuition-based community preschools dating back to June 2, 2020 regarding its obligation to reimburse parents for tuition. The BHD shall submit a proposed letter to WDE for approval by September 20, 2021. WDE shall approve the contents of the letter by September 27, 2021. The BHD shall provide WDE with verification of compliance and the full list of names to whom the letter was sent by October 4, 2021. Note that if a student receives FAPE in a community preschool other than one of the regional centers under contract with the BHD, the entire placement must be at no cost to the parent.

- b. Parents shall be required to submit verification to the BHD of the amount of tuition paid during the time their student received special education and related services in a community preschool dating back to June 2, 2020.
- c. The BHD shall reimburse the parents within 45 days of receipt of verification.
- d. Any parent who has been notified in writing about the right to receive tuition reimbursement but who fails to submit verification to the BHD by December 15, 2021, shall be deemed to have waived the right to reimbursement.
- e. The BHD shall provide a complete a list of parents who submitted verification of paid tuition to the BHD, the amount of reimbursement requested, the amount of reimbursement paid to each parent, and the date of reimbursement to WDE by January 20, 2022.
- 7. The BHD shall cease the practice of denoting "as needed" as an amount of service on a student's IEP. The frequency of all services shall be specified in a manner sufficient to inform the parent of the amount of service, the commitment of resources of the BHD, and the amount of time a student will spend away from nondisabled peers. The BHD shall amend all IEPs that currently denote a service amount "as needed." The IEP amendments shall be completed by December 15, 2021. Copies of all amendments and the Prior Written Notice accompanying each amendment shall be provided to WDE by December 20, 2021.
- 8. The BHD shall provide WDE with a written assurance that it has ceased the practice of using "as needed" to describe an amount of service in any students IEP throughout the regional developmental preschool system and centers under contract with the BHD. This written assurance shall be provided to WDE by September 27, 2021.
- The BHD shall develop a process to ensure that each regional center under contract with the BHD consults with WDE's Vision Outreach Services and Deaf and Hard of Hearing Outreach

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Services for any student suspected of hearing loss of visual impairment. The BHD shall submit a draft process to WDE for approval by September 27, 2021. WDE shall approve the process by October 4, 2021. The BHD shall provide a copy of the approved process with a written directive for implementation to each regional center by October 15, 2021. The BHD shall provide WDE with a copy of the written directive and an assurance that it was provided to each regional center by October 22, 2021.

Evidence of timely compliance and all required submissions must be sent to WDE to the attention of Susan Shipley, Dispute Resolution Coordinator. Please direct questions regarding this complaint investigation to WDE, Special Education Programs Division at 307.777.2925.

Sincerely,

Margee Robertson

Director of Special Education Programs

Marger Robiton

CC:

Jillian Balow, State Superintendent Shelly Hamel, Chief Academic Officer Mackenzie Williams, Senior Assistant Attorney General

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58 IDELR 290 9 ECLPR 84 112 LRP 14029

Dear Colleague Letter Office of Special Education Programs

N/A

February 29, 2012

Related Index Numbers
285.060 Preschool
373. PRESCHOOL PROGRAMS
Judge / Administrative Officer
Melody Musgrove, Director

RESCINDED pursuant to Executive Order 13777 (Oct. 20, 2017)

SUPERSEDED by guidance reported at 69 IDELR 106

Ruling

In determining the placement of a preschooler with a disability, public agencies must ensure that each child's placement is made in conformity with LRE, OSEP stated.

Meaning

LRE applies with equal force to preschoolers with disabilities served under Part B and older children receiving Part B services. Districts that lack preschool programs, or have only limited preschool programs, need to consider alternative placements or think creatively to ensure that they nevertheless provide a placement that both addresses the child's unique needs and complies with LRE. OSEP has stated that possible alternative placements include Head Start, community-based child care, and private preschool programs for typically developing children.

Case Summary

Some districts may need to think outside of the box when it comes to finding a placement for a preschooler that meets the child's needs in the least restrictive environment. A district with limited or no preschool programs is not absolved from its

obligation to comply with LRE for all students receiving Part B services, including preschoolers. OSEP noted that LRE applies to children aged 3 through 5, and at a state's discretion, 2-year-old children who will turn 3 during the school year. The LRE provision represents a strong preference for educating such children alongside their typically developing peers. Moreover, the preference applies whether or not the LEA operates public preschool programs for children without disabilities. OSEP pointed out that many LEAs do not offer public preschool programs, or offer only a limited range of such programs. Such LEAs "must explore alternative methods to ensure that the LRE requirements are met for that child," OSEP Director Melody Musgrove wrote. These methods may include: 1) providing opportunities for the child to participate in preschool programs operated by other public agencies (such as Head Start or community based child care); 2) enrolling preschool children with disabilities in private programs for nondisabled preschool children; 3) locating classes for preschool children with disabilities in regular elementary schools; or 4) providing home-based services. OSEP also stated that if a public agency determines that placement in a private preschool program is necessary for a child to receive FAPE, the public agency must make that program available at no cost to the parent.

Full Text

Dear Colleague:

The purpose of this letter is to reiterate that the least restrictive environment (LRE) requirements in section 612(a)(5) of the Individuals with Disabilities Education Act (IDEA) apply to the placement of preschool children with disabilities. The LRE requirements have existed since passage of the Education for all Handicapped Children Act (EHA) in 1975 and are a fundamental element of our nation's policy for educating students with disabilities (the EHA was renamed the IDEA in 1990). These requirements state the IDEA's strong preference for educating students with disabilities in regular classes

with appropriate aids and supports. Under section 612(a)(5) of the IDEA, to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, must be educated with children who are not disabled. Further, special classes, separate schooling, or other removal of children with disabilities from the regular educational environment may occur only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

The LRE requirements in section 612(a)(5) of the IDEA apply to all children with disabilities who are served under Part B of the IDEA, including preschool children with disabilities aged three through five, and at a State's discretion, two-year old children who will turn three during the school year. The statutory provision on LRE does not distinguish between school-aged and preschool-aged children and therefore, applies equally to all preschool children with disabilities. Despite this long-standing LRE requirement and prior policy guidance, the U.S. Department of Education (Department) continues to receive inquiries regarding the applicability of the LRE requirements under Part B of the IDEA to preschool children with disabilities.

Statutory and Regulatory Requirements

A preschool child with a disability who is eligible to receive special education and related services is entitled to all the rights and protections guaranteed under Part B of the IDEA and its implementing regulations in 34 CFR Part 300. One of these guaranteed rights is the right to be educated in the LRE in accordance with section 612(a)(5) of the IDEA and 34 CFR §§ 300.114 through 300.118. The LRE requirements under Part B of the IDEA state a strong preference for educating children with disabilities in regular classes alongside their peers without disabilities. The term regular class includes a preschool setting with typically developing peers. In determining the educational placement of a child with a disability, including a preschool child with a

disability, the public agency⁵ must ensure that each child's placement decision is made in conformity with the LRE provisions in 34 CFR §§ 300.114 through 300.118. 34 CFR § 300.116(a)(2). The child's placement must be based on the child's individualized education program (IEP). 34 CFR § 300.116(b)(2). In addition, the IEP must include an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class. 34 CFR § 300.320(a)(5).

Before a child with a disability can be placed outside the regular educational environment, the group of persons making the placement decision must consider whether supplementary aids and services could be provided that would enable the education of the child, including a preschool child with a disability, in the regular educational setting to be achieved satisfactorily. 34 CFR § 300.114(a)(2). If a determination is made that a particular child with a disability cannot be educated satisfactorily in the regular educational environment, even with the provision of appropriate supplementary aids and services, that child then could be placed in a setting other than the regular educational setting. The public agency responsible for providing a free appropriate public education (FAPE) to a preschool child with a disability must make available the full continuum of alternative placements, including instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals institutions, to meet the needs of all preschool children with disabilities for special education and related services. 34 CFR § 300.115.

Preschool Placement Options

The public agency responsible for providing FAPE to a preschool child with a disability must ensure that FAPE is provided in the LRE where the child's unique needs (as described in the child's IEP) can be met, regardless of whether the local educational agency (LEA) operates public preschool programs for children without disabilities. An LEA may provide special education and related services to a preschool child with a disability in a variety of

settings, including a regular kindergarten class, public or private preschool program, community-based child care facility, or in the child's home.

For data collection purposes, the Department defines a Regular Early Childhood Program as a program that includes a majority (at least 50 percent) of nondisabled children (i.e., children who do not have IEPs) and that may include, but is not limited to:

- Head Start;
- Kindergartens;
- Preschool classes offered to an eligible pre-kindergarten population by the public school system;
 - Private kindergartens or preschools; and
 - Group child development centers or child care.⁶

If there is a public preschool program available, the LEA may choose to make FAPE available to a preschool child with a disability in the public preschool program. However, many LEAs do not offer, or offer only a limited range of, public preschool programs, particularly for three- and four-year-olds. LEAs that do not have a public preschool program that can provide all the appropriate services and supports for a particular child with a disability must explore alternative methods to ensure that the LRE requirements are met for that child. methods may include: (1) providing opportunities for the participation of preschool children with disabilities in preschool programs operated by public agencies other than LEAs (such as Head Start or community based child care); (2) enrolling preschool children with disabilities in private preschool programs for nondisabled preschool children; (3) locating classes for preschool children with disabilities in regular elementary schools; or (4) providing home-based services. If a public agency determines that placement in a private preschool program is necessary for a child to receive FAPE, the public agency must make that program available at no cost to the parent.⁷

Conclusion

Placement decisions regarding a preschool child with a disability who is served under Part B of the IDEA must be individually determined based on the child's abilities and needs as described in the child's IEP. 34 CFR § 300.116(b)(2). State educational agencies and LEAs should engage in ongoing shortand long-term planning to ensure that a full continuum of placements is available for preschool children with disabilities. To achieve this goal, a variety of strategies, including staffing configurations, community collaboration models, and professional development activities that promote expanded preschool options are available. http://www.nectac.org/ for further information regarding the IDEA and services for preschool children with disabilities.

We hope this information is helpful in clarifying the applicability of LRE requirements to preschool children with disabilities who receive special education and related services under Part B of the IDEA. Thank you for your continued interest in improving results for children with disabilities.

¹Although not discussed here, other Federal laws apply to preschool-aged children with disabilities as well. These laws include section 504 of the Rehabilitation Act of 1973, as amended (Section 504) and Title II of the Americans with Disabilities Act of 1990 (ADA). The Department's Office for Civil Rights (OCR) enforces Section 504 and pursuant to a delegation by the Attorney General of the United States, OCR shares (with the U.S. Department of Justice) in the enforcement of Title II of the ADA. Section 504 is designed to protect the rights of individuals with disabilities in programs and activities that receive Federal financial assistance from the Department. 29 U.S.C. § 794, 34 CFR § 104.4(a). Section 34 CFR 104.38 of the Section 504 regulations specify that recipients of Federal financial assistance from the Department who provide preschool education may not on the basis of disability exclude qualified persons with disabilities, and must take into account the needs of these persons in determining the aid, benefits, or services to be provided. Title II

prohibits discrimination on the basis of disability by public entities, including public schools regardless of whether they receive Federal financial assistance. 42 U.S.C. §§ 12131-12134, 28 CFR Part 35 (Title II). Additionally, as applicable, entities providing preschool education must comply with the nondiscrimination requirements set forth in Title III of the ADA that prohibit discrimination on the basis of disability in places of public accommodation, including businesses and nonprofit agencies that serve the public. The U.S. Department of Justice enforces Title III of the ADA. 42 U.S.C. §§ 12181-12189, 28 CFR Part 36 (Title III).

²Under section 612(a)(1) of the IDEA, a State must make a free appropriate public education (FAPE) available to all children with disabilities residing in the State within the State's mandated age range. If a State's mandated age range includes children with disabilities aged three through five and two-year-old children who will turn three during the school year, all requirements in Part B of the IDEA, including the LRE requirements in section 612(a)(5), apply to those children.

³See OSEP Memorandum 87-17, OSEP Division of Assistance to States Policy Regarding Educating Preschool Aged Children with Handicaps in the Least Restrictive Environment (June 2, 1987); Letter to Neveldine, 16 LRP 842 (March 23, 1990); Letter to Wessels, 19 LRP 2074 (November 27, 1992); Letter to Neveldine, 20 LRP 2355 (May 28, 1993); Letter to Neveldine, 22 LRP 3101 (January 25, 1995); Letter to Neveldine, 24 LRP 3821 (April 17, 1996); Letter to Hirsh, 105 LRP 57671 (August 9, 2005); Letter to Anonymous, 108 LRP 33626 (March 17, 2008).

⁴See Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule, Analysis of Comments and Changes, 71 Fed. Reg. 46540, 46666 (August 14, 2006).

⁵The term public agency includes the State educational agency, local educational agencies (LEAs), educational service agencies (ESAs), nonprofit public charter schools that are not otherwise

included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities. See 34 CFR § 300.33.

⁶This is the definition that the Department uses in its annual data collection under section 618 of the IDEA on the number of children with disabilities aged three through five served under the IDEA Part B program according to their educational environments.

⁷See Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule, Analysis of Comments and Changes, 71 Fed. Reg. 46540, 46589 (August 14, 2006); and *Letter to Anonymous*, 108 LRP 33626 (March 17, 2008).

Statutes Cited

20 USC 1412(a)(5)

69 IDELR 106

117 LRP 1387

Dear Colleague Letter: Preschool Least Restrictive Environments Office of Special Education Programs

N/A

January 9, 2017

Related Index Numbers
205.035 LEA Use of Funds
205.015 Excess Costs
373. PRESCHOOL PROGRAMS
285.060 Preschool
Judge / Administrative Officer
Ruth E. Ryder, Acting Director

Supersedes 58 IDELR 290

Ruling

Updating its 2012 guidance reported at 58 IDELR 290, OSEP issued a *Dear Colleague* letter reemphasizing the importance of providing inclusive high-quality programs for preschoolers with disabilities. Among other topics, the guidance offers clarification concerning what constitutes a "regular early childhood program" for purposes of state accountability.

Meaning

The IDEA requires states to report annually on educational environments for preschoolers with disabilities. To comply with that requirement, education agencies should brush up on OSEP's guidance on what constitutes a "regular early childhood program" for a preschooler with a disability and when the student is considered to be receiving the majority of her services in such a program. For example, a state may not count as special education services received in a 'regular' program services that are delivered outside of the student's classroom in a setting that removes the child from the opportunity to interact with nondisabled peers.

Case Summary

OSEP explained in a Dear Colleague letter what it means for a child to be receiving special education and related services in a "regular early childhood program." For purposes of states' annual reporting requirements, OSEP stated that a student receives services in such a program when at least half of the students in the class are nondisabled children and services are delivered in the child's class during the course of daily activities in which the whole class participates. Under 20 USC 1418(a), states must annually report on the number of preschoolers with disabilities who attend a regular early childhood program and whether they receive the majority of hours of special education and related services in such a program or in another location. A regular early childhood program, OSEP wrote, means a program in which at least 50 percent of the children are nondisabled (i.e., children who do not have IEPs). That might include, OSEP observed, a kindergarten class, Head Start, a public preschool class, a private preschool program, or group child development centers or child care. However, informal neighborhood playgroups or home settings don't qualify, OSEP stated. OSEP explained that services would be considered to be provided in a regular early childhood program when they are delivered in the child's classroom in the course of daily activities and routines in which all children in the classroom participate. "However, services delivered in other locations that remove the child from the opportunity to interact with nondisabled children would not be considered as being received in the Regular Early Childhood Program," OSEP Acting Director Ruth E. Ryder wrote. For example, a student would not be receiving instruction or services in a regular program if services are delivered in a one-to-one therapeutic setting or in a small group comprised solely of children with disabilities in a different location in the building.

Full Text

Dear Colleague:

We are writing to reaffirm the position of the

U.S. Department of Education (ED or Department) that all young children with disabilities should have access to inclusive high-quality early childhood programs where they are provided with individualized and appropriate supports to enable them to meet high expectations. Over the last few years, States and communities have made progress in expanding early learning opportunities for young children, with all but four States investing in free public preschool programs. The Federal government, while aligning with the movement of States, has led several efforts to increase access to and the quality of early childhood programs, such as the Preschool Development Grants and expansion of Head Start. States have focused on improving the quality of early learning programs, including the development of early learning program standards and incorporating these into Quality Rating and Improvement Systems (QRIS).²

In September 2015, ED and the U.S. Department of Health and Human Services (HHS) issued a policy statement on promoting inclusion in early childhood programs to set a vision on this issue and provide recommendations to States, local educational agencies (LEAs), schools, and public and private early childhood programs.³ Despite the expansion of early childhood programs, there has not yet been a proportionate expansion of inclusive early learning opportunities for young children with disabilities. Given this concern and the ED-HHS policy statement on early childhood inclusion, the Office of Special Education Programs (OSEP) is updating the February 29, 2012, Dear Colleague Letter (DCL) to reaffirm our commitment to inclusive preschool education programs for children with disabilities and to reiterate the least restrictive environment (LRE) requirements in section 612(a)(5) of the Individuals with Disabilities Education Act (IDEA or Act) are fully applicable to the placement of preschool children with disabilities. 4 This DCL supersedes the 2012 OSEP DCL and includes additional information on the reporting of educational environments data for preschool children with disabilities and the use of IDEA Part B funds to provide special education and related services to preschool children with disabilities.

The LRE requirements have existed since passage of the Education for all Handicapped Children Act (EHA) in 1975 and are a fundamental element of our nation's policy for educating students with disabilities (the Education of the Handicapped Act was renamed the IDEA in 1990). These requirements reflect the IDEA's strong preference for educating students with disabilities in regular classes with appropriate aids and supports. Under section 612(a)(5) of the IDEA, to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, must be educated with children who are not disabled. Further, special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

The LRE requirements in section 612(a)(5) of the IDEA apply to all children with disabilities who are served under Part B of the IDEA, including preschool children with disabilities aged three through five, and at a State's discretion, to two-year-old children who will turn three during the school year. IDEA's LRE provision does not distinguish between school-aged and preschool-aged children and, therefore, applies equally to all preschool children with disabilities. Despite this long-standing LRE requirement and prior policy guidance, ED continues to receive inquiries asking whether IDEA's LRE requirements apply to preschool children with disabilities.

Key Statutory and Regulatory Requirements

A preschool child with a disability who is eligible to receive special education and related services and his or her parents are entitled to all the rights and protections guaranteed under Part B of the IDEA and its implementing regulations in 34 CFR

Part 300. One of these guaranteed rights is the right to be educated in the LRE in accordance with section 612(a)(5) of the IDEA and 34 CFR §§ 300.114 through 300.118. The LRE requirements under Part B of the IDEA state a strong preference for educating children with disabilities in regular classes alongside their peers without disabilities. The term "regular class" includes a preschool setting with typically developing peers. 7 Under 34 CFR § 300.116(a), in determining the educational placement of a child with a disability, including a preschool child with a disability, the public agency must ensure that each child's placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options and is made in conformity with the LRE provisions in 34 CFR §§ 300.114 through 300.118. The child's placement must be based on the child's individualized education program (IEP) and determined at least annually. 34 CFR § 300.116(b)(1) and (2). In addition, the IEP must include an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class. 34 CFR § 300.320(a)(5).

Before a child with a disability can be placed outside the regular educational environment, the group of persons making the placement decision must consider whether supplementary aids and services could be provided that would enable the education of the child, including a preschool child with a disability, in the regular educational setting to be achieved satisfactorily. 34 CFR § 300.114(a)(2). If a determination is made that the education of a particular child with a disability cannot be achieved satisfactorily in the regular educational environment, even with the provision of appropriate supplementary aids and services, that child then could be placed in a setting other than the regular educational setting. The public agency responsible for providing a free appropriate public education (FAPE) to a preschool child with a disability must make available the full continuum of alternative placements, including instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions, to meet the needs of all preschool children with disabilities for special education and related services. 34 CFR § 300.115. In selecting the LRE, consideration also must be given to any potential harmful effect on the child or on the quality of services that the child needs. 34 CFR § 300.116(d).

Preschool Placement Options

The public agency responsible for providing FAPE to a preschool child with a disability must ensure that FAPE is provided in the LRE where the child's unique needs (as described in the child's IEP) can be met, regardless of whether the LEA operates public preschool programs for children without disabilities. An LEA may provide special education and related services to a preschool child with a disability in a variety of settings, including a regular kindergarten class, public or private preschool program, community-based child care facility, or in the child's home.

If there is an LEA public preschool program available, the LEA may choose to make FAPE available to a preschool child with a disability in the LEA's public preschool program. While the number of public pre-kindergarten programs has increased, many LEAs do not offer, or offer only a limited range of, public preschool programs, particularly for three-year-olds. In these situations, the LEA must explore alternative methods to ensure that the LRE requirements are met for each preschool child with a disability. These methods may include: (1) providing opportunities for the participation of preschool children with disabilities in preschool programs operated by public agencies other than LEAs (such as Head Start or community-based child care); (2) enrolling preschool children with disabilities in private preschool programs for nondisabled preschool children; (3) locating classes for preschool children with disabilities in regular public elementary schools; or (4) providing home-based services. If a public agency determines that placement in a private preschool program is necessary for a child to receive

FAPE, the public agency must make that program available at no cost to the parent. 9

Additionally, preschool children with disabilities are often identified as children with disabilities while participating in regular public preschool programs, such as Head Start or a regular public pre-kindergarten program. The following requirements apply when determining placement options for a child with a disability who already participates in a regular public preschool program, including a community-based regular public preschool program operated by a public agency other than the LEA. Under 34 CFR § 300.116(c), unless the child's IEP requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled. In addition, under 34 CFR § 300.116(d), the placement team, which includes the child's parent and may include the child's current teacher, must consider any potential harmful effect on the child and on the quality of services that he or she needs before removing the child from the current regular public preschool setting to another more restrictive setting. Consistent with these requirements, IDEA presumes that the first placement option considered for a preschool child with a disability is the regular public preschool program the child would attend if the child did not have a disability. Therefore, in determining the placement for a child with a disability who already participates in a regular public preschool program, the placement team must consider whether the LEA, in collaboration with the regular public preschool program, can ensure that the child receives all of the special education and related services and supplementary aids and services included in the child's IEP in order to meet the needs of the particular child with a disability.

Reporting Educational Environments Data for Preschool Children With Disabilities

In accordance with the data collection requirements in section 618(a) of the Act, the Department requires States to report on educational environments for preschool children with disabilities.

This data collection requires States to report on the number of preschool children with disabilities who attend a Regular Early Childhood Program and whether they receive the majority of hours of special education and related services in the Regular Early Childhood Program or another location. For data collection purposes, the Department defines a Regular Early Childhood Program as a program that includes a majority (at least 50 percent) of nondisabled children (i.e., children who do not have IEPs) and that may include, but is not limited to:

- Head Start;
- Kindergartens;
- Preschool classes offered to an eligible pre-kindergarten population by the public school system;
 - Private kindergartens or preschools; and
- Group child development centers or child care.11

We have received questions regarding whether more informal settings, such as weekly school-based or neighborhood playgroups, or home settings may be considered a Regular Early Childhood Program. For the purpose of the Department's annual data collection under section 618 of the Act, we do not consider these informal settings as Regular Early Childhood Programs because they are generally not required to comply with a State's early learning programs standards or curricula.

As noted above, States are required to report whether children attending a Regular Early Childhood Program receive the majority of hours of special education and related services in the Regular Early Childhood Program or in some other location. ¹² It has come to our attention that additional clarification is needed regarding when special education and related services can be considered as being received in the Regular Early Childhood Program. Specifically, stakeholders have asked whether "in the Regular Early Childhood Program" means a child must receive the majority of special education and related services in the child's classroom, or whether some

other location within the building would also be considered "in the Regular Early Childhood Program." Special education and related services delivered in the child's classroom in the course of daily activities and routines in which all children in the classroom participate (e.g., "circle time", "learning centers"), would be considered as being received in the Regular Early Childhood Program. However, services delivered in other locations that remove the child from the opportunity to interact with nondisabled children would not be considered as being received in the Regular Early Childhood Program. These include, but are not limited to, services delivered in a 1:1 therapeutic setting, or in a small group comprised solely of children with disabilities in another location within the building where the regular early childhood program is located.

To further address these questions, the reporting instructions in the EDFacts C089 file specifications for IDEA Section 618 Part B Child Count and Educational Environment will be updated for School Year 2017-2018. The updated file specifications will address informal settings as a Regular Early Childhood Program and will clarify when special education and related services are considered as being provided in the Regular Early Childhood Program.

Use of IDEA Part B Funds for Preschool Children With Disabilities

We have received questions regarding the use of IDEA Part B (section 611 and section 619) funds to provide special education and related services to preschool children with disabilities. LEAs must ensure that Part B funds are used in conformity with Part B requirements, including requirements in 34 CFR § 300.202. In general, LEAs must use IDEA Part B section 619 funds, and as applicable IDEA Part B section 611 funds, only to pay the excess costs of providing special education and related services to children with disabilities ages three through five and, at a State's discretion, to two-year-old children with disabilities who will reach age three during the school year, such as costs for special education teachers and administrators; related services providers; materials and supplies for use with preschool children with disabilities; professional development for special education personnel; professional development for general education teachers who teach preschool children with disabilities; and specialized equipment or devices to assist preschool children with disabilities. ¹³ 34 CFR §§ 300.202 and 300.800.

Because the availability of regular public preschool programs varies across States, we understand that the use of State and local funds will also differ across States and LEAs. Consequently, how States and LEAs use IDEA Part B funds to provide special education and related services to preschool children with disabilities also will differ based on the specific circumstances in each State and LEA. For example, if an LEA provides universal preschool to all children ages three, four, and five, using State and local funds, the LEA must use IDEA Part B funds only to pay the excess costs of providing special education and related services to children with disabilities in those preschool programs.

The excess cost requirement, however, does not prevent an LEA from using Part B funds to pay for all of the costs directly attributable to the education of a child with a disability in any of the ages three, four, or five if no local or State funds are available for nondisabled children of these ages. For example, if an LEA offers no regular public preschool programs for children without disabilities, and a preschool child with a disability is already participating in a private preschool program that is being paid for by the child's parents, the child's placement team may determine that, based on the child's IEP and the LRE provisions, placement in a private preschool program is necessary for the child to receive FAPE in the LRE. In such situations, the LEA responsible for providing FAPE to the child must pay for all of the costs associated with the provision of special education and related services in the LRE, as stated in the child's IEP. See 34 CFR §§ 300.145 through 300.147. Specifically, if the placement team determines, based on the child's IEP, that placement in an inclusive private preschool

program is necessary to provide FAPE to a child who needs interaction with nondisabled peers, the LEA is responsible for making available an appropriate program in the LRE and ensuring that tuition costs associated with that placement for the period of time necessary to implement the IEP are at no cost to the parents. 14

Conclusion

Placement decisions regarding a preschool child with a disability who is served under Part B of the IDEA must be individually determined based on the child's abilities and needs as described in the child's IEP. 34 CFR § 300.116(b)(2). State educational agencies and LEAs should engage in ongoing shortand long-term planning to ensure that a full continuum of placements is available for preschool children with disabilities. To achieve this goal, a variety of strategies, including staffing configurations, community collaboration models, and professional development activities, that promote expanded preschool options are available. For additional information regarding the IDEA and services for preschool children with disabilities, see the Early Childhood **Technical** Assistance Center http://ectacenter.org/ and the Department's Early Learning Inclusion webpage

We hope this information is helpful in clarifying the applicability of LRE requirements to preschool children with disabilities who receive special education and related services under Part B of the IDEA. Thank you for your continued interest in the importance of providing inclusive early learning opportunities for young children with disabilities.

¹Walter N. Ridley Lecture: Pre-Kindergarten Access and Quality are Essential for Children's Growth and Development (November 2, 2016), available take into account the needs of these persons in http://www.ed.gov/news/speeches/walter-n-ridley-lecture-pre-kindergarten-access-and-quality-are-essential-childrens-growth-and-determining the aid, benefits, or services to be For more detailed but less recent information on State investments in public preschool see: Barnett, W.S., Friedman-Krauss, A., Gomez, R.E., Squires, J.H.,

Clarke Brown, K., Weisenfeld, G.G., & Horowitz, M. (2016). The state of preschool 2015: State preschool vearbook. New Brunswick, NJ: National Institute for Early Education Research.

²QRIS statewide systems are implemented in over half of the States and others are developing such systems. ED and the of Department of Health and Human Services have supported States in further developing such systems under Race to the Top-Early Learning Challenge and the Child Care Development Fund. For more information https://qrisguide.acf.hhs.gov/index.cfm?do=qrisabout.

³See U.S. Departments of Education and Health and Human Services Policy Letter on the Inclusion of Children with Disabilities in Early Childhood Programs (September 14, 2015), available at: http://www2.ed.gov/policy/speced/guid/earlylearning/joint-statement-fu

⁴Although not discussed here, other Federal laws apply to preschool-aged children with disabilities as well. These laws include section 504 of the Rehabilitation Act of 1973, as amended (Section 504) and Title II of the Americans with Disabilities Act of 1990, as amended (ADA). The Department's Office for Civil Rights (OCR) enforces Section 504 and pursuant to a delegation by the Attorney General of the United States, OCR shares (with the U.S. http://www2.ed.gov/about/inits/ed/earlylearning/inclusion/iDdparhtunht of Justice and HHS) in the enforcement of Title II of the ADA in the education context. HHS has Title II jurisdiction over public preschools. 35 35.190(b)(3). Section 504 CFR discrimination on the basis of disability in programs or activities that receive Federal financial assistance from the Department. 29 U.S.C. § 794, 34 CFR § 104.4(a). Section 104.38 of the Department's Section 504 regulations specify that recipients of Federal financial assistance from the Department that provide preschool education may not on the basis of disability exclude qualified persons with disabilities, and must

provided. 34 CFR § 104.38. Title II prohibits discrimination on the basis of disability by public entities, including public schools, regardless of whether they receive Federal financial assistance. 42 U.S.C. §§ 12131-12134, 28 CFR Part 35 (Title II). Additionally, as applicable, entities providing preschool education must comply with the nondiscrimination requirements set forth in Title III of the ADA that prohibit discrimination on the basis of disability in places of public accommodation, including businesses and nonprofit agencies that serve the public. The U.S. Department of Justice enforces Title III of the ADA. 42 U.S.C. §§ 12181-12189, 28 CFR Part 36 (Title III).

⁵Under section 612(a)(1) of the IDEA, a State must make a free appropriate public education (FAPE) available to all children with disabilities residing in the State within the State's mandated age range. All States make FAPE available beginning on a child's third birthday. All requirements in Part B of the IDEA, including the LRE requirements in section 612(a)(5), apply to children with disabilities aged three through five and two-year-old children who will turn three during the school year, if they are included in the State's mandated age range. See also 20 U.S.C. 1413(a)(1) (applying these LRE requirements to LEAs).

⁶See OSEP Memorandum 87-17, OSEP -Division of Assistance to States Policy Regarding
Educating Preschool Aged Children with Handicaps
in the Least Restrictive Environment (June 2, 1987);
Letter to Neveldine, 16 LRP 842 (March 23, 1990);
Letter to Wessels, 19 LRP 2074 (November 27,
1992); Letter to Neveldine, 20 LRP 2355 (May 28,
1993); Letter to Neveldine, 22 LRP 3101 (January 25,
1995); Letter to Neveldine, 24 LRP 3821 (April 17,
1996); Letter to Hirsh, 105 LRP 57671 (August 9,
2005); Letter to Anonymous, 108 LRP 33626 (March
17, 2008).

⁷See Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule, Analysis of Comments and Changes, 71 Fed. Reg. 46540, 46666 (August 14, 2006).

⁸The term "public agency" includes the State educational agency, LEAs, educational service

agencies (ESAs), nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities. See 34 CFR § 300.33.

⁹See Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule, Analysis of Comments and Changes, 71 Fed. Reg. 46540, 46589 (August 14, 2006); and OESP *Letter to Anonymous* (March 17, 2008), available at http://www2.ed.gov/policy/speced/guid/idea/letters/2008-1/redacted031

¹⁰For additional information on the data collection requirements under section 618 of the Act, see the Child Count and Educational Environment information available at:

http://www2.ed.gov/programs/osepidea/618-data/collection-documentat

¹¹This is the definition that the Department uses in its annual data collection under section 618 of the IDEA on the number of children with disabilities aged three through five served under the IDEA Part B program according to their educational environments.

12See the Child Count and Educational
Environment information available at:
http://www2.ed.gov/programs/osepidea/618-data/collection-documentat

13See OSEP Letter to Couillard (March 7, 2013) available at: http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/12-011637r-v

¹⁴See OSEP Letter to Neveldine, 22 IDELR 630 (January 25, 1995). We also note that there may be circumstances where a placement team determines that a specific service needed by a child could be provided in a variety of settings and would not require interaction with nondisabled peers, assuming all other Part B requirements, including the LRE requirements, are met. In those instances where the placement team has determined that provision of that service is all that is required to provide FAPE to the child, the public agency is only responsible for providing the required service and that service could be provided in a variety of settings.

Statutes Cited

20 USC 1412(a)(5) 20 USC 1418





U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES U.S. DEPARTMENT OF EDUCATION

POLICY STATEMENT ON INCLUSION OF CHILDREN WITH DISABILITIES IN EARLY CHILDHOOD PROGRAMS

September 14, 2015

PURPOSE

The purpose of this policy statement is to set a vision and provide recommendations to States, local educational agencies (LEAs), schools, and public and private early childhood programs, from the U.S. Departments of Education (ED) and Health and Human Services (HHS) (the Departments), for increasing the inclusion of infants, toddlers, and preschool children with disabilities in high-quality early childhood programs.¹

It is the Departments' position that all young children with disabilities should have access to inclusive high-quality early childhood programs, where they are provided with individualized and appropriate support in meeting high expectations. This joint ED and HHS policy statement aims to advance this position by:

- Setting an expectation for high-quality inclusion in early childhood programs;
- Increasing public understanding of the science that supports meaningful inclusion of children with disabilities, from the earliest ages, in early childhood programs;
- Highlighting the legal foundations supporting inclusion in high-quality early childhood programs;
- Providing recommendations to States, LEAs, schools, and early childhood programs for increasing inclusive early learning opportunities for all children; and
- Identifying free resources for States, programs, early childhood personnelⁱⁱ, and families to support high-quality individualized programming and inclusion of children with disabilities in early childhood programs.

Though this policy statement focuses on including young children with disabilities in early childhood programs, it is our shared vision that all people be meaningfully included in all facets of society

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ⁱ Early childhood programs refer to those that provide early care and education to children birth through age five, where the majority of children in the program are typically developing. These include, but are not limited to, private or publicly funded center or family-based child care, home visiting, Early Head Start, Head Start, private preschool, and public school and community-based pre-kindergarten programs, including those in charter schools.

ⁱⁱ Early childhood personnel refer to professionals who provide early care and education services to children birth through age five, including public or private preschool teachers, home and center-based child care providers, Head Start and Early Head Start teachers, home visitors, early interventionists, early childhood special educators, and related services personnel.

throughout the life course. This begins in early childhood programs and continues into schools, places of employment, and the broader community. Inclusion in early childhood programs can set a trajectory for inclusion across the life course, making it critical that we include individuals with disabilities in all facets of society from birth.

OVERVIEW

This year our country proudly celebrates the 25th anniversary of the Americans with Disabilities Act, the 40th anniversary of the Individuals with Disabilities Education Act (IDEA), and the 50th anniversary of Head Start. All three efforts have been transformative in ensuring equal opportunity for all Americans. While tremendous progress has been made, the anniversaries of these laws are cause for reflection on the work that lies ahead.

Children with disabilities and their families continue to face significant barriers to accessing inclusive high-quality early childhood programs and too many preschool children with disabilities are only offered the option of receiving special education services in settings separate from their peers without disabilities¹. This lag in inclusive opportunities is troubling for many reasons. First, equal opportunity is one of America's most cherished ideals. Being meaningfully included as a member of society is the first step to equal opportunity and is every person's right – a right supported by our laws. Second, research indicates that early childhood inclusion is beneficial to children with and without disabilities.² Third, preliminary research shows that operating inclusive early childhood programs is not necessarily more expensive than operating separate early childhood programs for children with disabilities.³ Finally, meaningful inclusion can support children with disabilities in reaching their full potential resulting in broad societal benefits, including higher productivity in adulthood and fewer resources spent on interventions and public assistance later in life.⁴

It is well documented that the beginning years of all children's lives are critical for building the early foundations of learning and wellness needed for success in school and later in life. During these years, children's brains develop rapidly, influenced by the experiences they share with their families, teachers, peers, and in their communities. Like all children, it is critical for children with disabilities to be exposed to a variety of rich experiences where they can learn in the context of play and everyday interactions and engage with their peers with and without disabilities. In partnership with families, high-quality early childhood programs can facilitate the experiences that foster learning for all children.

States and communities have made progress in expanding early learning opportunities for young children, with 40 States and the District of Columbia now offering some form of State-funded public pre-kindergarten programs and a growing number of States are increasing access to infant-toddler early childhood programs. Aligning with the movement of States, the Federal government has several efforts to increase access to and the quality of early childhood programs through the Race to the Top-Early Learning Challenge, Preschool Development Grants, expansion of Head Start and Early Head Start, and the Early Head Start-Child Care Partnerships, among others. Despite these expansions in the availability of early childhood programs, there has not yet been a proportionate expansion of inclusive early learning opportunities for young children with disabilities. It is critical when expanding the availability of high-quality early childhood programs to ensure that children with disabilities are included in these opportunities, so they too reap the benefits of high-quality early learning experiences. Systems should be built and expanded to support the learning and development of all children. This means that a "high-quality" early childhood program should be one that is inclusive of children with disabilities and their families, ensuring that policies, funding, and practices enable their full participation and success.

Given the important nationwide focus on early learning, the time is right to strengthen our efforts to address barriers to inclusion of children with disabilities in early childhood programs. All early childhood

programs and services, including public and private preschool, center and family-based child care, Early Head Start and Head Start, and the IDEA, in partnership with families and communities, play an important role in building a nationwide culture of inclusion of children with disabilities.

THE FOUNDATION FOR INCLUSION IN EARLY CHILDHOOD PROGRAMS

Policy makers have partnered with families, advocates, practitioners, and researchers for decades to expand access to inclusive early childhood programs for children with disabilities, reinforced by a strong legal foundation. In the findings to the IDEA, Congress states, "Almost 30 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by ... having high expectations for such children and ensuring their access to the general education curriculum in the regular classroom program, to the maximum extent possible in order to ...meet developmental goals and, to the maximum extent possible, the challenging expectations that have been established for all children...". This principle is equally applicable to the participation of young children with disabilities in inclusive early childhood programs. Undoubtedly, there is more work to be done to expand children's access to meaningful inclusive early learning opportunities. Further progress will require a shared responsibility and a nationwide commitment to prioritize access to high-quality early childhood programs for children with disabilities in policies, budgets, and practices; to work together to reshape attitudes and beliefs about inclusion and to raise expectations for what children with disabilities can achieve; and to create a comprehensive system that meets the individualized learning and developmental needs of all children. The following sections set a basic foundation for inclusion that can inform the implementation of the State, LEA, school, and program level recommendations offered in subsequent sections.

Inclusion in Early Childhood Programs

Inclusion in early childhood programs refers to including children with disabilities in early childhood programs, together with their peers without disabilities; holding high expectations and intentionally promoting participation in all learning and social activities, facilitated by individualized accommodations; and using evidence-based services and supports to foster their development (cognitive, language, communication, physical, behavioral, and social-emotional), friendships with peers, and sense of belonging. This applies to all young children with disabilities, from those with the mildest disabilities, to those with the most significant disabilities.

The vision for inclusion in early childhood programs and recommendations provided in the policy statement build on the principles and definition set forth in the joint position statement from the National Association for the Education of Young Children (NAEYC) and the Council for Exceptional Children's Division for Early Childhood (DEC). While NAEYC and DEC's position statement focuses on the inclusion of young children in society more broadly, the purpose of this policy statement is to focus on the inclusion of children with disabilities in general early childhood programs.

The Scientific Base for the Benefits of Inclusion

Research supports the benefits of inclusion for young children with and without disabilities. Studies have shown that individualized evidence-based strategies for children with disabilities can be implemented successfully in inclusive early childhood programs. Children with disabilities, including those with the most significant disabilities and the highest needs, can make significant developmental and learning progress in inclusive settings. Some studies have shown that children with disabilities in inclusive settings experienced greater cognitive and communication development than children with disabilities who were in separate settings, with this being particularly apparent among children with more significant

disabilities. ^{12,13} Further, children with disabilities tend to have similar levels of engagement as their typically developing peers, ^{14,15} and are more likely to practice newly acquired skills in inclusive settings as compared to separate settings. ¹⁶ Likewise, research suggests that children's growth and learning are related to their peers' skills and the effects are most pronounced for children with disabilities. ¹⁷ High-quality inclusion that begins early and continues into school likely produces the strongest outcomes. Studies have shown that children with disabilities who spend more time in general education classes tend to be absent fewer days from school and have higher test scores in reading and math than those who spend less time in general education classes, ^{18,19} and spending more time in general education classes was related to a higher probability of employment and higher earnings. ²⁰

In addition to making learning and achievement gains, children with disabilities in inclusive early childhood programs also demonstrate stronger social-emotional skills than their peers in separate settings. ²¹ These social benefits are robust and can continue into elementary school and beyond. ²² Studies have found that children with disabilities in inclusive classrooms demonstrated more social interactions with peers with and without disabilities, had larger networks of friends, and were more socially competent compared to children in separate settings. ^{23,24,25,26,27} Importantly, while studies indicate that inclusive services produce benefits for children with disabilities, these desired outcomes are achieved only when young children with disabilities are included several days per week in social and learning opportunities with typically developing peers, ²⁸ and specialized instructional strategies are used to meet children's individual needs. ²⁹ Systems supports such as resources for professional development, ongoing coaching and collaboration, and time for communication and planning are critical to ensure that programs and personnel can adequately meet the needs of individual children. ^{30,31} Additionally, the developmental benefits of early childhood inclusion can be lost if children are placed in separate settings in preschool, kindergarten, and elementary school. ³² Inclusion in early childhood settings followed by inclusion in elementary school can sustain these developmental gains.

Children without disabilities can also benefit from inclusive early childhood programs. Studies indicate that typically developing children can show positive developmental, social, and attitudinal outcomes from inclusive experiences. They are capable of demonstrating greater compassion and empathy and can have a more positive perception of children with disabilities when peer interactions are adequately supported by classroom teachers. ^{33,34} They can also develop a better understanding of diversity and disability as concepts. ^{35,36} When programs and teachers have an advanced understanding and capacity for individualizing learning and can provide appropriate developmental supports for each child, all children can benefit, because all children learn best with individualized supports. Children without disabilities in high-quality inclusive early childhood settings also benefit from developmental specialists who can identify and address delays in development that might otherwise not be identified.

The Legal Foundation for Inclusion

The right to access inclusive early childhood programs is supported by a robust legal foundation. The IDEA supports equal educational opportunities for eligible children with disabilities birth through 21. Part C of the IDEA requires that appropriate early intervention services are made available to allⁱⁱⁱ eligible infants and toddlers with disabilities in natural environments, including the home, and community settings in which children without disabilities participate, to the maximum extent appropriate, factoring in each child's routines, needs, and outcomes. Similarly, under Part B of the IDEA, special education and related

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ⁱⁱⁱ Under Parts B and C of the IDEA, "all" means all eligible infants, toddlers, and children with disabilities in the State and includes those who are English learners, immigrants (regardless of their immigration status), homeless, and in foster care as well as those who reside on Indian reservations.

services are to be made available to all children with disabilities ages three through 21, to the maximum extent appropriate, in the least restrictive environment (LRE) factoring in an individual child's unique strengths and needs. LRE further requires a continuum of placement options be available to best meet the diverse needs of children with disabilities, and presumes that the first placement option considered for each child with a disability is the regular classroom the child would attend if he or she did not have a disability. Thus, before a child with a disability can be placed outside of the regular educational environment, the full range of supplementary aids and services that could be provided to facilitate the child's placement in the regular classroom setting must be considered. Each LEA must ensure that a free appropriate public education (FAPE) is provided in the LRE to every child with a disability in its jurisdiction regardless of whether the LEA operates public general early childhood programs. This could include providing special education and related services in public or private general early childhood or preschool programs, Head Start and Early Head Start programs, and community-based child care programs.

In addition, the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973 (Section 504) prohibit discrimination on the basis of disability. Title II of the ADA prohibits discrimination by public entities, regardless of receipt of Federal funds, and protects children with disabilities from unlawful discrimination in early childhood programs, activities and services operated by state or local governments, including public school districts. Title II provides that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of such services, programs or activities of a public entity, or be subjected to discrimination by such entity. Title II applies to the services, programs, and activities of all state and local governments throughout the United States, including their early childhood programs. Title II further requires public entities to provide services in the most integrated setting appropriate to the needs of individuals with disabilities. Integrated settings are those that provide individuals with disabilities opportunities to live, work, and receive services in the greater community, like individuals without disabilities. In addition, Title III of the ADA prohibits discrimination in places of public accommodation, such as private schools, private child care programs, or private preschools; regardless of whether an entity receives federal funds. Section 504 prohibits discrimination by public or private entities that receive federal financial assistance (FFA). Section 504 provides that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of any entity that receives FFA, or be subjected to discrimination by such entity. FFA includes grants, loans, and reimbursements from Federal agencies, including assistance provided to early childhood programs. HHS and ED's Section 504 regulations require recipients such as schools to provide equal educational opportunities for children with disabilities in the most integrated setting appropriate to the child's needs.

Additionally, the Head Start Act and the Child Care and Development Block Grant Act (CCDBG) also have specific provisions and requirements that support high-quality inclusive opportunities for children with disabilities. By statute, Head Start and Early Head Start programs must make at least 10 percent of their enrollment opportunities available to children with disabilities. The CCDBG Act requires States to develop strategies for increasing the supply and quality of child care services for children with disabilities. See Appendix 1 for more information on the legal foundation for early childhood inclusion, including frequently asked questions addressed by the Department of Justice on the ADA and child care.

CHALLENGES TO INCLUSION IN EARLY CHILDHOOD PROGRAMS

Families and experts have identified several challenges to inclusion in early childhood programs. Families of infants and toddlers with disabilities report that they have difficulty finding and keeping child care, which can cause stress and negatively impact their employment.³⁷ While infants and toddlers with disabilities served under the IDEA typically receive early intervention services in natural environments,

including home and community settings, families report a lack of coordination between early intervention, preschool special education, and child care services and difficult transitions between Part C and Part B, section 619 of the IDEA.³⁸

Preschool children with disabilities have difficulty accessing early childhood special education services in inclusive settings. In 2013, more than half (54.3 percent) of preschool children with disabilities received early childhood special education services in settings separate from their peers without disabilities. ^{iv}, ³⁹ Data trends over the past three decades indicate that the percentage of preschool children with disabilities who receive early childhood special education services in general early childhood programs has remained largely unchanged. ⁴⁰ In many cases, children are not provided early childhood special education services in settings with their peers without disabilities. Many children are referred to separate settings, such as special education preschool classrooms, as a first resort. This may be especially true for children with more significant disabilities, despite evidence that inclusion is beneficial to children across ability levels. The following challenges are frequently cited as barriers to inclusion in early childhood programs:

Attitudes and Beliefs: The most frequently reported barrier to early childhood inclusion that has remained largely unchanged over the past several decades are attitudes and beliefs. In many cases, false beliefs and negative attitudes about inclusion may be influenced by misinformation of the feasibility of inclusion, fear of the unfamiliar, resistance to changing existing practices, stereotyping of children with disabilities, a worry that children with disabilities will divert attention and resources from their peers without disabilities, and lack of awareness of the benefits for all children, including those without disabilities and those with the most significant disabilities. Any effort to expand access to inclusive early childhood programs for children with disabilities needs to be accompanied by a strong focus on shifting attitudes and beliefs.

IDEA Interpretation and Perceived Barriers: There may be tensions between the IDEA's requirement that services are identified on an individualized basis and IDEA's natural environments and LRE requirements regarding the service setting. For example, some jurisdictions may interpret IDEA's Part C natural environments provision as only allowing early intervention services to be provided in eligible children's homes, and not fully consider the child's outcomes and how those outcomes may be met in alternative settings such as inclusive early childhood programs or other community settings where typically developing children are included. Other jurisdictions may interpret IDEA's free appropriate public education (FAPE) and LRE requirements as only allowing IDEA preschool special education and related services to be delivered in preschool programs operated in a public school building as opposed to non-public school settings, such as child care and Head Start where services can be delivered. In fact, a mixed delivery system of public and private high quality early childhood programs could be important to increasing the availability of inclusive opportunities for children with disabilities.

Lack of Staffing, Training, and Expertise of the Early Childhood Workforce: There is large variability in the training, education, and expertise of the early childhood workforce. Providers may lack basic knowledge and competencies in child development, early childhood pedagogy, individualizing instruction, managing challenging behavior, promoting social-emotional development, and scaffolding

iv Separate settings refer to attending a general early childhood program but receiving services in another location, residential facility, separate class separate school, and service provider location. (*FILE C089 – Children with Disabilities (IDEA) Early Childhood File Specifications – V11.0* (SY 2014-15), U.S. Department of Education, Washington, DC: ED*Facts*. Retrieved from http://www.ed.gov/edfacts).

learning across activities and between peers. This affects all children, including those with disabilities, and may present a challenge to providing high-quality inclusive early learning experiences.

Lack of Comprehensive Services: The lack of comprehensive services delivered in early childhood programs is also a barrier to inclusion. Programs like Head Start and Early Head Start provide children with a coordinated set of comprehensive services. Outside of Head Start, however, few scaled programs offer the same type of coordinated comprehensive services. The multiple systems that provide services to young children, such as the early care and education, early intervention and special education, and health – including pediatric medical homes and mental health – often deliver services in separate settings. The lack of delivery of comprehensive supports and the variation in the coordination of comprehensive supports in early childhood programs may be a barrier to the full participation and success of children with disabilities in inclusive settings. In addition, children with disabilities, more than other children, may have increased interface across several systems, and may therefore be disproportionately affected by the lack of comprehensive services offered in any one system.

Limited Time and Commitment to Build Partnerships: A key ingredient to successful inclusion is a strong partnership between early childhood educators, early interventionists, early childhood special educators, related services providers, pediatric healthcare providers, and other developmental specialists. Strong partnerships are critical to ensuring children receive adequate and appropriate supports and services in their early childhood programs. Many communities believe in the importance of inclusion but have made little progress due to limited planning time or a lack of commitment and support from leaders. Fostering relationships between providers requires an on-going commitment. Equally important is a commitment across providers to build strong partnerships with families, children's first and most important teachers and advocates.

THE PATH AHEAD: PARTNERING TO BUILD A NATIONWIDE CULTURE OF INCLUSION

Addressing the remaining challenges and barriers to inclusion in early childhood programs and ensuring children with disabilities receive the individualized supports they need to thrive, requires a community-wide partnership that brings families, advocates and self-advocates, developmental specialists, early childhood programs, schools, LEAs, and community and State leaders together to build a culture of inclusion, supported by the empirical and legal foundations of inclusion. Though some of this work has been underway in communities for many years, these efforts need to be expanded and more widely adopted across the country. This will require partners to come together to:

- Celebrate diversity of all forms and in all facets of society;
- Talk to neighbors, community members, and State and local leaders about the importance of inclusion; highlight the universal benefits of inclusion for children with and without disabilities; and counter myths, misconceptions, and stereotypes about children with disabilities;
- Co-create inclusion strategic plans, at the State, LEA, school and program levels; and
- Strongly communicate inclusion as a shared responsibility and a top priority, and demonstrate a commitment to inclusion through policy changes and appropriate resource allocation at all levels.

^v A pediatric medical home is a team-based health care delivery model defined by the American Academy of Pediatrics (AAP) as providing care that is comprehensive, family-centered, coordinated, compassionate, and culturally effective.

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A central component of establishing a culture of inclusion within the early childhood system is ensuring that the individualized needs, supports, expectations, and goals of children with disabilities are always considered with those of other children. It is critical for the early childhood system to consider the principles of *access*, *participation*, *and support*. As defined in the DEC/NAEYC inclusion position statement, ⁴² *access* refers to removing structural, physical, or communicative-related barriers to full participation; *participation* refers to strategies used to promote children's learning, development, and sense of belonging; and *support* refers to the broader system that enables these efforts, including program/school-family partnerships and professional development. Systems should be designed in ways that are beneficial to all children^{vi} in their communities. A culture of inclusion sets the stage to implement the recommendations provided here and is the first step to reaching the ultimate vision of providing access to inclusive high-quality early learning opportunities for all children.

RECOMMENDATIONS FOR STATE ACTION

1. Create a State-Level Interagency Taskforce and Plan for Inclusion

All State agencies that provide services to young children should take an active role in ensuring that policies and investments support a coordinated, comprehensive early childhood system that provides access to inclusive early learning opportunities to all children and is prepared to meet the individualized needs of all children. State leaders should prioritize, invest in, and set the vision for inclusion, and establish expectations and resources for LEA administrators, school principals, and early childhood program directors to implement the vision in local communities. States should leverage existing early childhood councils or taskforces, such as their State Advisory Councils for Early Care and Education or State Interagency Coordinating Council, and create (or strengthen) a focus on early childhood inclusion. As young children with disabilities are served across multiple programs, the taskforce should provide leadership in bringing

States Should:

- ✓ Bring partners, including families, together and co-create a State vision statement for inclusion
- Leverage existing early childhood state councils or taskforces and establish a focus on inclusion
- Develop a plan for inclusion and providing services and supports
- ✓ Review funding sources and modify early childhood resource allocation to better support inclusion
- ✓ Make State quality frameworks inclusive
- Strengthen accountability and create incentives
- ✓ Enhance existing professional development systems to emphasize inclusion
- ✓ Support children's social-emotional and behavioral health
- Raise public awareness

together different sectors and groups within the State and, at a minimum, include representatives from IDEA Part B, section 619, IDEA Part C, Head Start, Early Head Start, child care, home visiting, pediatrics, Medicaid, the State educational agency (SEA), LEAs, elementary schools, mental health, related services organizations, specialized service providers, family networks, and family support organizations.

The council should build on existing early childhood efforts in the State, including quality improvement efforts. States should review and coordinate existing State plans, such as strategic early childhood State plans, Child Care and Development Fund State Plans, IDEA State Systemic Improvement Plans, or plans

vi In designing early childhood programs, it is important to address the needs of all children, including children with special health care needs, children with disabilities or developmental delays, children in poverty, as well as children who are English learners, who are immigrants (including both documented and undocumented), refugees, migrant, homeless, or in foster care. Additional information about LEAs' obligations to English learners is available in joint guidance released by the Department of Justice and the Department of Education, English Learner Students and Limited English Proficient Parents (Jan. 7, 2015), available at www.ed.gov/ocr/letters/colleague-el-201501.pdf.

for specific grant programs (e.g. Preschool Development Grants), to ensure that early childhood inclusion and the necessary services and supports for children with disabilities are consistently addressed across plans. The State should also review previous and current early childhood inclusion efforts (e.g. MAPS to inclusive child care, Expanding Opportunities, SpecialQuest, and National Professional Development Center on Inclusion) to ensure that lessons learned are applied. The taskforce should bring partners together, co-create a written State vision statement for early childhood inclusion, and link to applicable technical assistance (TA) networks within the State to develop and carry out an inclusion plan.

2. Ensure State Policies Support High-Quality Inclusion

State policies set the direction for how LEAs, schools, and early childhood programs vii implement inclusion and provide the necessary services and supports for children with disabilities. States should review their policies to ensure that they facilitate- rather than create barriers to- high-quality inclusion and that they are consistent with Federal and State legal requirements. States should also:

- Consider policies that promote coordinated and culturally and linguistically responsive viii comprehensive services across early childhood programs, including health, mental health, and other social services.
- Consider children who are dually placed in more than one program and eliminate policies that require
 unnecessary transitions between service providers that can burden families, disrupt service delivery,
 and interrupt child progress.
- Ensure that after children are identified with a disability, families do not have to choose between early intervention or special education services and remaining in their existing early childhood program.
- Ensure that the principle of natural proportions ix guide the design of inclusive early childhood programs.
- Review their early learning guidelines to ensure that they are inclusive of the learning and developmental needs of children with disabilities.
- Ensure that future early learning initiatives within the State, including expansion of early childhood programs such as State pre-kindergarten, have specific policies and procedures to recruit, enroll, and appropriately support the learning and developmental needs of all young children with disabilities, from those with mild to those with significant disabilities.
- Promote a mixed delivery system of high-quality inclusive early learning opportunities by establishing partnerships with private early childhood programs and ensuring that professional development and TA efforts span across public and private community-based programs (including center-based and family child care programs), to ensure that all early childhood programs are equiped to support the learning and development of all children.

vii Early childhood programs are those that provide early care and education to children birth through age five, where the majority of children in the program are typically developing. These include, but are not limited to private or publicly funded center- or family-based child care, Head Start, private preschool programs, and public school and

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community-based pre-kindergarten programs, including those in charter schools.

viii Principles for cultural responsiveness in early childhood can be found at the National Center for Cultural and Linguistic Responsiveness.

ix "Natural proportions" is the inclusion of children with disabilities in proportion to their presence in the general population. Application of this principle does not anticipate or permit imposing caps or quotas on the number of children with disabilities in a program or not individualizing services for children with disabilities under the IDEA.

- Ensure that families are involved in policy decisions, including providing support to family organizations to build the capacity of families to meaningfully participate in policy discussions, planning, and evaluating the State's progress towards their inclusion plan.
- Build statewide infant and early childhood mental health consultation (IECMHC) systems that offer
 programs support so that children with disabilities, including those with emotional and behavioral
 difficulties, can be successful, and teachers and providers have the skills and knowledge needed to
 promote this success.

3. Set Goals and Track Data

Guided by their written vision statement on inclusion, States should set concrete goals for expanding access to inclusive and high-quality early learning opportunities. States should establish a baseline that identifies the number of inclusive high-quality early childhood slots available, the number of children under five with and without disabilities served in those slots, and benchmarks that track progress in reaching the State's goals. Additionally, States should ensure that children across the State have equal access to inclusive early childhood programs.

4. Review and Modify Resource Allocations

Preliminary studies have shown that inclusive early childhood programs are not necessarily more expensive than separate early childhood programs. 43 States should review how existing resources are allocated and how they may be reallocated to better support increased access to inclusive early childhood programs. States should consider using funds across multiple early childhood programs, particularly IDEA funds with other early childhood funding streams, including public preschool, child care, Title I funds for pre-K services, and Early Head Start and Head Start. Finance mapping plans may help States determine how to most efficiently and effectively utilize funds from different funding streams. In addition, States should provide technical assistance and guidance to LEAs and early childhood programs on allocating resources and braiding funds at the local level to support increased access to inclusive settings that meet the individualized learning and developmental needs of children with disabilities. States should also encourage the use of Title II teacher development funds to be used to expand competencies in providing inclusive early childhood education for public school personnel and to invite other local early childhood personnel to participate. 44 In addition, Medicaid funding for early intervention services is available for children enrolled in Medicaid through the Early and Periodic Screening, Diagnostic and Treatment Program (EPSDT). 45 State Medicaid agencies are important financing partners and States have options they can utilize to facilitate locating and enrolling eligible children in Medicaid, such as Express Lane Eligibility (ELE).x

5. Ensure Quality Rating Frameworks are Inclusive

Most traditional quality standards are applicable and necessary for the learning and development of all children (e.g. health and safety standards, appropriate ratios, evidence-based curriculum, developmental screening, cultural and linguistic responsiveness, continuous professional development). However, they

^x As many programs have the same means-based eligibility requirements, ELE allows states to rely on eligibility findings for other programs such as Supplemental Nutrition Assistance Program, Special Supplemental Nutrition Program for Women, Infants, and Children and Temporary Assistance for Needy Families to find that the children enrolled in these programs are also eligible for Medicaid and to facilitate their enrollment in health coverage http://www.medicaid.gov/medicaid-chip-program-information/by-topics/outreach-and-enrollment/express-lane-eligibility.html.

may not fully address the learning and developmental needs of children with disabilities. State quality rating frameworks should take this into account. Each level in a quality framework should include indicators applicable to children with disabilities, as opposed to indicators specific to children with disabilities being optional or only applying at the highest level of a framework. In rating early childhood programs, States should consider that traditional environmental quality assessments may not be sufficient for assessing the quality of the environment for children with disabilities. States should supplement traditional environmental assessments with tools that specifically measure the quality of inclusion. Those supplements should always be part of the assessment of early childhood settings, not optional.

6. Strengthen Accountability and Build Incentive Structures

States should address barriers to inclusion within their accountability systems for early childhood programs. This should include reviewing the individualized education program (IEP) process in local communities to ensure that IEP teams are providing families of eligible children with all of their options in the continuum of services and supports, and making decisions that are both individualized and consistent with LRE requirements. State agencies should hold local programs and agencies accountable for providing access to inclusive early learning opportunities to children with disabilities by having LEAs document how they are meeting requirements to provide services in the LRE, including through their partnerships with early childhood programs in the community. States may also incorporate inclusion indicators in their child care licensing standards or in agreements they make with providers who accept Child Care and Development Funds, and provide programs, technical assistance and monitor them based on legally applicable standards under the IDEA and Section 504 and the ADA (regardless of receipt of Federal funds).

States can incentivize high-quality inclusive early learning models through, for example, publicly recognizing programs that are implementing high-quality inclusive programs, using tiered reimbursement in their quality rating and improvement systems, providing child care subsidy payment differentials per child with a disability included in a general early childhood program, ensuring all trainings on children with disabilities and inclusion are credit bearing, providing tuition assistance for credit bearing courses on inclusion, and offering TA to programs to implement inclusive practices.

7. Build a Coordinated Early Childhood Professional Development (PD) System

An effective early childhood workforce is a key component of expanding access to inclusive high-quality early childhood programs. States should ensure that their professional development efforts are ongoing, coordinated and differentiated so that inclusion is meaningfully addressed, and that efforts are inclusive of paraprofessionals and aides, center-based and family child care providers, teachers, directors and principals, and other leaders.

• Build a Common Knowledge and Competency Base Across Child-Serving Providers

The National Academies of Science report, *Transforming the Workforce for Children Birth Through Eight*, recommends that all service providers who work with young children have a common knowledge and competency base. All providers should have knowledge of child development and learning, the importance of consistent and nurturing relationships, and the biological and environmental factors that influence development. They should also share competencies in engaging children in high-quality interactions, promoting social-emotional development and mitigating challenging behaviors, recognizing signs that children may need assessments and additional services, and using various tools and techniques to promote learning. States should ensure that their efforts to build this common base, in partnership with training programs and institutions of higher education, include considerations for children with disabilities, including children with low-incidence disabilities.

• Ensure that State Certifications, Credentials, and Workforce Preparation Programs have a Strong Focus on Inclusion and Supporting Children With Disabilities

All early childhood personnel need to be prepared to support children with disabilities. States should ensure that personnel standards, credentials, certifications and licensure requirements for general early childhood personnel, including directors or principals, teachers and providers, ^{xi} and paraprofessionals or aides, include competencies for working with children with disabilities and their families. The State should partner with institutions of higher education (IHEs) to ensure that early childhood preparation degree programs include specific pedagogy for children with disabilities woven throughout the entire curriculum, including coursework and practicum experiences, rather than contained in a small number of supplemental courses or a separate program. They should also ensure that there are programs within the State to prepare specialists to work with young children with disabilities, including children with low-incidence disabilities.

• Ensure Personnel Policies Facilitate Inclusion

States should ensure that their policies allow children with disabilities to be served in classrooms led by early childhood teachers and providers. As many early childhood teachers and providers do not have specialized disability certifications, instruction should be delivered in consultation with and under the supervision of professionals with specialized training and certifications, such as occupational therapists, physical therapists, and speech-language pathologists or other related services providers, teachers of the deaf and hard of hearing, teachers of the blind and visually impaired, orientation and mobility specialists, behavioral specialists or early childhood mental health consultants, early childhood special educators, and early interventionists. States should consider promoting co-teaching models where specialists and teachers or providers work jointly with children in inclusive settings, and coaching/mentoring models to support teachers and providers in developing their competencies.

Offer Cross-Sector Professional Development and Technical Assistance

States should ensure that existing early childhood professional development and TA efforts always consider and are inclusive of all children with disabilities. States can supplement existing efforts to ensure that professionals working with young children can access information and obtain on-site TA in evidence-based inclusion practices. States can consider the following actions to promote cross-sector professional development and TA:

- ✓ Develop and implement a cross-sector professional development/technical assistance plan for all teachers, providers, and specialists working with young children.
- ✓ Establish a group of inclusion experts that provide ongoing TA and professional development opportunities to all staff on supporting the learning and development of children with disabilities.
- ✓ Ensure that professional development is tied to specific competencies, are sequential and credit bearing, and focus on a wide range of topics, each inclusive of how the content and practice applies to children with disabilities.
- ✓ Use Title II teacher development funds to build capacity in providing inclusive high-quality early education. Invite community-based teachers and providers to join trainings with school-based personnel.

xi Early childhood teachers and providers refer to professionals who provide early care and education services to children birth through age five, including public or private preschool teachers, home and center-based child care providers, including family child care providers, and Head Start and Early Head Start teachers.

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- ✓ Establish a method for local programs to request support around inclusion through, for example, statewide hotlines, telemedicine consultation, or coaching networks.
- ✓ Develop community hubs and networks of teachers and providers who can share training and
- ✓ Expand access to specialists, including inclusion coaches, behavioral or mental health consultants, and related services providers with the eventual goal of providing universal access to all early childhood programs in the State.
- ✓ Identify and highlight programs that are exemplars of inclusion so that State and local leaders and teachers and providers can visit the site to see how inclusion can be successfully implemented.

8. Implement Statewide Supports for Children's Social-Emotional and Behavioral Health

A lack of program capacity to manage challenging behavior or social-emotional developmental delays may be barriers to inclusion and may contribute to expulsions and suspensions. As such, all early childhood programs should have access to specialists who can build capacity in working with young children, with an emphasis on fostering social-emotional and behavioral health. States should implement early childhood mental health consultation (ECMHC) models xii or age appropriate positive behavior intervention and supports (PBIS) frameworks. xiii Practices like ECMHC and PBIS, both of which generally consist of staff capacity building paired with external specialized support, have been shown to reduce and prevent expulsion and suspension in early learning and school settings, as well as reduce rates of teacher-rated challenging behaviors in young children. ^{47,48} See Appendix 2 for more resources on ECMHC, PBIS and expulsion in early learning settings.

HHS and ED have committed to prioritizing social-emotional and behavioral health through:

- A joint HHS and ED policy statement on preventing expulsion and suspension in early childhood settings and a website with several free resources.
- Center For Early Childhood Mental Health Consultation
- Center for the Social Emotional Foundations for Early Learning
- Technical Assistance Center for Social Emotional Intervention.
- Positive Behavioral Interventions and Support Technical Assistance Center

9. Raise Public Awareness

States should take an active role in shifting perceptions of inclusion and of children with disabilities. States should partner with community leaders to communicate the benefits of early childhood inclusion, affirm the laws and research that provide the foundation for inclusion, and set the expectation that the

xii Early Childhood Mental Health Consultation (ECMHC) is a multi-level preventive intervention that teams mental health professionals with people who work with young children and their families to improve their social-emotional and behavioral health and development. ECMHC builds the capacity of providers and families to understand the powerful influence of their relationships and interactions on young children's development.

xiii Program-wide positive behavioral interventions and support (PBIS) is a systems approach to establishing the

social culture and behavioral supports needed for all children in a school or early childhood program to achieve both social and academic success. It is a group of effective practices, interventions, and evidence-based implementation supports. PBIS strategies are typically organized into three progressively intensive tiers, with specific interventions being executed across primary, secondary and tertiary tiers.

community is responsible for ensuring that all children have access to high-quality early childhood programs and the individualized supports they need to fully participate in those programs. Key audiences and partners should include early childhood programs and schools and their staff; parents and families of children with and without disabilities; specialized service providers; pediatric healthcare professionals; philanthropic, business, and other private sector partners; faith-based organizations; elected officials, and other relevant community leaders.

RECOMMENDATIONS FOR LOCAL ACTION

With the support of States, leaders in LEAs, schools, early childhood programs, and family child care networks can strive toward providing high-quality early learning experiences for all young children. Leaders can adopt a culture of inclusion, set expectations for services to be provided in inclusive settings to the extent appropriate per child need, establish fair and appropriate policies, allocate existing resources in ways that facilitate increased access to inclusive early childhood programs, and prioritize workforce development. Early childhood leaders can serve as communitywide leaders for inclusion, by convening a diverse coalition of inclusion champions who can implement a culture of inclusion across the entire community.

1. Partner with Families

Families are young children's first and most important teachers and advocates. Schools and early childhood programs should intentionally plan and assess how they are partnering with all families. It is important to ensure that all families are knowledgeable about the benefits of inclusion and understand their rights and how to navigate the systems that serve their children. Schools and programs could support this by connecting families to the parent training and information center in their State, and providing specific resources on inclusion in early childhood programs, individualized supports and services their child is entitled to, and the continuum of placement options available to meet their child's unique needs. This information should be available and accessible to all families, including those with limited English proficiency. xiv Schools and early childhood programs should build families' capacity to advocate for their children, including accessing their local early childhood programs and having services provided in their local early childhood programs. They should include families in policy development, advocacy efforts, and public information initiatives, including inclusion forums and conferences. Teachers and providers should also have ongoing conversations with families on their children's learning and development, regularly share information on developmental

LEAs, Schools and **Programs Should:**

- Create a vision statement and a culture of inclusion
- Conduct a policy review
- Prioritize inclusive placements using the IEP/IFSP process
- Review and modify resource allocation
- Enhance professional development for LEA administrators, directors, principals, teachers, providers, administrative and support staff
- Ensure access to specialized supports for staff to build capacity in promoting children's learning, social-emotional health, language, communication and behavioral development
- Assess the quality of inclusive settings
- Establish a supporting staffing structure
- Develop formal collaborations with community providers

xiv A description of entities' Federal obligations to ensure meaningful communication with limited English proficient parents in a language they can understand and to adequately notify limited English proficient parents of information about any program, service, or activity of a school district that is called to the attention of non-limited English

proficient parents is available in joint guidance released by the Department of Justice and the Department of Education, English Learner Students and Limited English Proficient Parents (Jan. 7, 2015), available at www.ed.gov/ocr/letters/colleague-el-201501.pdf.

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screening and child assessment, ask for their perspectives on their children's strengths and needs, and connect them to additional services and supports, as needed, such as family to family health resource centers or specialized service providers.

Schools and programs should also build staff's capacity in family engagement, including respecting and incorporating families' cultures, preferences, and priorities into children's learning. They should also ensure administrative, custodial, and other support staff understand the program's culture of inclusion and interface with families respectfully and compassionately, and provide continuous professional development to teachers and providers on forming strong goal-oriented relationships with families that are linked to their child's development, learning, and wellness.

2. Adhere to Legal Provision of Supports and Services in Inclusive Settings with IFSPs/IEPs

The IDEA requires that IFSP and IEP teams make service and setting decisions for children with disabilities based on their individual needs. LEAs, schools, and other local early intervention service providers should review their IFSP/IEP processes to ensure that natural environments and inclusive

settings are meaningfully discussed for each child and that the first options considered for infants, toddlers, and preschool children with disabilities are those that would be considered for children without disabilities. Where appropriate for the individual needs of a child with a disability, IFSPs/IEPs should be written such that goals and outcomes can be met with the provision of services and supports in inclusive settings. For example, if a child in Head Start is identified with a disability and found eligible under the IDEA as a child with a disability, the first consideration should be that their special education services are provided in their Head Start program. Families should not be given an "either/or" option, such that they must choose between Head Start or special education services. Early childhood teachers and providers, xv child development specialists, and related services providers, should be included on IFSP teams, with parent permission. IEP teams are required to include at least one general education teacher if the child is participating in the general education environment. Teachers and providers should understand children's goals, strategies to meet goals, and their role and the role of early interventionists, early childhood special educators, and related

Strategies to Promote Access:

- Removal of physical and structural barriers
- Multiple and varied formats for instruction and learning
- ✓ Strategies and modifications to promote learning, from making simple changes to the environment and materials to helping a child use special equipment

Strategies to Promote Participation:

- Embedded instruction and other naturalistic interventions
- ✓ Scaffolding strategies
- Tiered models of instruction

services providers in helping children reach their goals. Teachers and providers should also understand how to access specialized services and supports as needed.

3. Assess and Improve the Quality of Inclusion in Early Childhood Programs

Children's progress in meeting their developmental and learning goals is typically monitored through formative assessments. Children's assessments should be paired with environmental assessments of their early childhood programs to ensure that there are appropriate accommodations and supports to reach their goals. A high-quality inclusive class ensures both *access* and *participation*. Assessments of access and participation may be layered on existing environmental assessments. Programs can use results of assessments to guide TA and professional development efforts.

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xv Including family child care and center-based child care providers.

4. Review and Modify Resource Allocation

Resource allocation plays an important role in inclusion. In many cases, LEAs, schools or early childhood programs use most of their funding for children with disabilities on separate classrooms for children with disabilities. Early childhood leaders, including family child care network leaders, can examine the ways they allocate funds that serve children with disabilities and modify them to promote inclusion by considering and acting on the following points:

- ✓ How are IDEA Parts B and C funds used to provide services in inclusive programs or natural environments with typically developing peers to the maximum extent appropriate, in accordance with the provisions of the IDEA?
- ✓ How are we allocating funds and formalizing partnerships with community-based early childhood programs, including child care, to establish a mixed delivery system, where children with disabilities can receive inclusive early learning opportunities in different settings across the community?
- ✓ How are our resources targeting the use of evidence-based practices for the most effective child developmental outcomes?
- ✓ How might resource allocation support some early childhood special educators shifting from full time teachers to providing consultative services to teachers and providers?
- ✓ How might we support early intervention, early childhood special education, related services providers, and other specialized providers in providing consultative services to early childhood teachers, providers, and staff?
- ✓ How can we optimize the distribution of specialized providers, materials, and equipment across early childhood programs?
- ✓ How are professional development resources being used to expand access to training and coaching, specific to supporting all children with disabilities, to all staff?

5. Enhance Professional Development

High-quality staff should have knowledge, strong competencies, which include competencies in culturally and linguistically responsive practice, and positive attitudes and beliefs about inclusion and disability in order to foster the development of all children. In addition they should have a strong understanding of universal design^{xvi} and universal design for learning.^{xvii} Preparation and professional development in each of these areas is necessary for all staff, including LEA administrators, early childhood program directors, school principals, family child care network leaders, teachers and providers, early interventionists, early childhood special educators, related services providers, other specialized providers, and aides. Leaders should ensure that the necessary infrastructures and supports are in place to enable continuous professional development and improvement of all leaders and staff. Programs with dedicated professional development funds such as LEAs and Head Start programs should ensure professional

^{xvi} Universal design is the philosophy of developing and designing physical environments to be accessible to the greatest extent possible, to the people who use them, without the need for adaptation.

^{xvii} Universal design for learning is an educational framework based on the learning sciences, which informs the design and development of flexible instructional practices, materials, and tools that address the variability of all learners. This framework is essential to allow children with disabilities ways to engage with learning and to develop knowledge and skills in early childhood programs.

development in the area of inclusive early childhood programming is not only available to their own staff, but is also open to local early childhood partners from child care and family child care settings.

- LEA Administrators, Early Childhood Directors, Principals, and Family Child Care Network **Leaders** are critical to high-quality inclusion in early childhood programs. These leaders may establish priorities, policies and procedures; set the culture and climate of the district, school, program or network; oversee staff development and morale; provide continuity when staff turnover occurs; and take an active role in shifting perceptions of inclusion through public awareness within the community. Leaders should participate in regular professional development opportunities that include reviews of the literature on inclusion, guidance on how to establish a culture of inclusion and enact strong inclusive polices, and practical budgeting and resource allocation strategies that support inclusion. Leaders should also establish local learning communities with other local early childhood leaders to share lessons learned, brainstorm challenges, and collaborate on solutions. Leaders should establish policies that require all staff and providers to engage in professional development specific to adopting a culture of inclusion, and supporting the learning and developmental needs of children with disabilities through individualized learning. They should also ensure that staff and providers have specific time set aside for in-service training and coaching, and to engage in reflection, planning, problem solving, and peer learning on issues related to inclusion.
- Teachers and Providers are essential to ensuring that all children are afforded high-quality early experiences. Supported by specialists and their LEA, school, or program leaders, teachers and providers should possess the skills to meet the learning needs of all children. Through intentional preparation, training, and supports, teachers, providers and other staff can feel confident in their abilities to serve children with diverse needs. All general professional development opportunities offered to early childhood staff should incorporate how the content applies and can be individualized for children with disabilities. LEAs, schools, and early childhood programs should strive to support their workforce and strengthen their capacity in:
 - ° Assessing unique learning styles and implementing individualized instructional strategies to reach learning, language, and developmental goals for all children;
 - Oesigning all activities, such as free play, circle time, learning groups, outdoor play, or snack time, to fully support the participation of all children, including children with disabilities;
 - ° Integrating IFSP/IEP goals into children's learning across everyday routines;
 - Implementing DEC Recommend Practices;⁴⁹
 - Occumenting and sharing developmental progress with families and other service providers;
 - ° Promoting social-emotional development, and appropriately addressing challenging behavior;
 - ^o Facilitating social learning opportunities between children with disabilities and their peers;
 - ° Forming strong, supportive, nurturing relationships with children and their families;
 - Conducting ongoing developmental monitoring, universal developmental and behavioral screenings at recommended ages, and follow-up, as needed;
 - Coordinating with community-based service providers, including local disability support agencies and children's medical homes;
 - Promoting the health and well-being of children, including understanding the needs of children with special health care needs and providing documentation in medical action plans; and

- On the strong understanding of cultural diversity and competencies in culturally and linguistically responsive practice, and in employing self-reflective strategies to identify, prevent and correct all implicit and explicit biases, including racial/ethnic/national origin, gender, sexual orientation, and language and disability biases.
- Early interventionists, Early Childhood Special Educators and Related Services Personnel play a unique role in supporting young children's access to and participation in inclusive early childhood programs. Early interventionists, early childhood special educators, related services providers, and other specialized providers should deliver services to children with disabilities in early childhood programs and with support embedded in everyday routines. They should coteach and coach early childhood teachers and providers to encourage inclusive educational environments, as opposed to focusing on working with children in separate settings or pulling children out of their settings for specialized instruction, as a first option. In addition to having strong competencies in working directly with children with disabilities, leaders should ensure that these professionals have the capacity to:
- o Understand the goals, curriculum, and approach used in the early childhood program;
- Build culturally and linguistically responsive relationships and partnerships with teachers and providers;
- ° Use evidence-based consultation and coaching models;
- Share knowledge and expertise with families and teachers and providers to improve their confidence, competence, and capacity to support the overall development and learning of all children;
- ° Co-teach in an early childhood program; and
- ^o Build trusting relationships with families and work with them to identify inclusive options in the community and appropriate services and supports based on the unique needs of their child.

Finally, a critical component of enhancing workforce capacity at all levels is promoting teacher and provider health and wellness and ensuring that staff at all levels are compensated fairly and work reasonable hours with breaks. Strong relationships with community-based service providers can offer staff additional social services, as needed, including health and mental health supports. Promoting staff wellness strengthens their capacity to form strong and stimulating nurturing relationships with children, as well as reduce job stress.

6. Establish an Appropriate Staffing Structure and Strengthen Staff Collaboration

Establishing staffing structures and increasing staff collaboration may require programs to shift existing resources and systems. Early childhood classrooms may consist of a skilled lead teacher or provider and a paraprofessional or aide, supported by specialists like early interventionists, early childhood special educators, early childhood mental health consultants, and related services providers. Programs should strongly consider implementing co-teaching models. Specialists can partner with teachers and providers to observe, model and share strategies for helping children with disabilities on an ongoing or periodic basis. Programs, schools, and networks should also have a disability or inclusion coordinator, who oversees child goals, coordinates child services with other service providers, connects children and families with additional services as needed, and helps families navigate services for their children. It is also critical to allocate staff time for coordination and collaboration between the professionals who work with young children. This facilitates comprehensive coordinated services, enables staff to understand their

roles and responsibilities and the roles and responsibilities of others to facilitate children's learning and development.

7. Ensure Access to Specialized Supports

Early childhood programs, schools, and family child care networks should have access to specialized supports delivered by experts like early interventionists, inclusion specialists, early childhood mental health consultants, behavior consultants, early childhood special educators, developmental specialists, teachers of the deaf and hard of hearing, teachers of the blind or visually impaired, orientation and mobility specialists, or related services providers. This specialized support should be culturally and linguistically responsive to meet the diverse needs of providers and teachers, and the children and families whom they serve. This specialized support can increase the quality of early learning experiences and care for *all* children. It would provide assistance in adapting the program's environment, activities, and instructional support to promote full participation of children with disabilities. Specialists may also assist schools and programs by conducting classroom observations and developing strategies to meet children's goals, including IFSP and IEP goals; including behavior support plans for children who require them and provide guidance on implementing those plans; and connecting children, families, and staff to additional support services, as needed. Specialists and the services they provide should be coordinated so that each is aware of the goals, strategies, and progress of the others.

8. Develop Formal Collaborations with Community Partners

Formal agreements and strong collaboration are critical for establishing a mixed delivery system where children have access to inclusive early learning opportunities in a range of settings across their community, such as in child care programs, public preschool, or Head Start. These formal collaborations are critical to fulfilling the natural environment and LRE requirements in IDEA, particularly in LEAs or schools that do not operate a general early childhood program. If LEAs do not operate inclusive early childhood programs, they should make formal agreements with community-based early childhood programs, such as Head Start or private preschool programs, to provide services in the LRE to children with disabilities in their district. Head Start and Early Head Start programs are required to establish collaborative partnerships with community organizations that may include individuals and agencies that provide services to children with disabilities. Formal agreements are important to ensuring that Early Head Start and Head Start programs can meet their requirements to serve children with disabilities in their programs. Further, the CCDBG Act requires States to describe how they will coordinate services provided under the Child Care and Development Fund (CCDF) with services and programs serving children with disabilities.

In addition, young children with disabilities and their families often require services that may be delivered by providers outside of their early childhood programs. Formal collaborations between public and private community partners, such as the medical home and developmental specialists, may improve screening, evaluation, and referral systems, data sharing, and may help ensure children who need additional supports receive them as soon as possible. Formal partnerships may also facilitate the use of Wrap-Around Services, a philosophy of care that involves providing intensive coordinated community based services designed to meet children's specific social-emotional and behavioral health needs.

Additionally, as many children transition from infant/toddler programs to preschool and all young children eventually graduate from their early childhood program and progress to elementary school, formal agreements between early childhood programs, schools, and family child care networks can support alignment among the programs. This could also help facilitate child transitions from inclusive early childhood programs to inclusive elementary school settings.

CONCLUSION

As the country continues to move forward on the critical task of expanding access to high-quality early childhood programs for all young children, it is imperative that children with disabilities be included at the onset of each of these efforts, and be offered equal opportunities to benefit from these experiences. The case for meaningful inclusion of young children with disabilities, not only in early childhood programs, but in the community more broadly is an essential component of our nation's efforts to ensure equality of opportunity for all Americans. The vision presented here, that all children have access to inclusive high-quality early childhood programs, requires strong State and local leadership, a shared responsibility and commitment within communities, and a robust partnership between families, schools, communities, and government at all levels. By striving toward this vision and implementing these recommendations, we can move forward as a country in honoring the rights of all of our youngest children and living up to the American ideal of offering an equal opportunity to all.

Appendix 1: Legal Foundation for Inclusion

Inclusion is not only supported by a research base; it is also supported by a robust legal foundation with applicable statutes including the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act, the Americans with Disabilities Act (ADA), the Head Start Act, and the Child Care and Development Block Grant Act (CCDBG). These Federal laws recognize and support inclusion because of the developmental, educational, and social benefits that inclusion provides to children with disabilities.

The Individuals with Disabilities Education Act (IDEA)

The IDEA supports equality of opportunity and full participation for eligible children with disabilities birth through 21 by providing funds to States to assist them in developing and implementing systems of early intervention and special education and related services for all eligible infants and toddlers and children and youth with disabilities. The IDEA Part C program requires that eligible infants and toddlers with disabilities receive services in natural environments to the maximum extent appropriate and the IDEA Part B program requires that eligible children with disabilities age three through 21 receiving services in the least restrictive environment (LRE) to the maximum extent appropriate. Eligible children with disabilities under Part B of the IDEA are to receive the full range of supplementary aids and services to enable them to be educated with children who do not have disabilities, participate in the general educational or developmental curriculum, and participate in typical non-academic activities with nondisabled peers, to the maximum extent appropriate. http://idea.ed.gov

Part C of IDEA

The Program for Infants and Toddlers with Disabilities (Part C of IDEA) requires States that receive Part C grants to develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system that provides early intervention services for infants and toddlers with disabilities from birth through age two and their families and, at the State's discretion, to children with disabilities through age five (or until entry into kindergarten, whichever occurs earlier). Appropriate early intervention services for any infant or toddler with a disability are to be provided in natural environments, including the home, and community settings in which children without disabilities participate, to the maximum extent appropriate, as determined by the individualized family service plan (IFSP) team. The IDEA requires that the IFSP must include a determination of the appropriate setting for providing early intervention services to an infant or toddler with a disability, including any justification for not providing a particular early intervention service in the natural environment. This determination is made by the IFSP team, which includes the parent and other team members, and must be consistent with the intended outcomes expected to be achieved by the child as written in the IFSP.

Part B, section 619 of IDEA

The Preschool Grants Program (Part B, section 619 of the IDEA) provides formula grants to assist States, to provide special education and related services to children with disabilities aged 3 through 5, and at a State's discretion, to 2-year-old children with disabilities who will turn 3 during the school year. In order to be eligible for these grants, States must make a free appropriate public education (FAPE) available to all eligible children with disabilities ages 3 through 5. These special education and related services must be provided, to the maximum extent appropriate, in the LRE based on each individual child's unique strengths and needs. It further requires that a continuum of placement options be available to best meet the diverse needs of children with disabilities. The LRE requirements of the IDEA state a strong preference for educating children with disabilities in general education settings alongside their peers without disabilities to the maximum extent appropriate. Under LRE requirements, the IDEA presumes

that the first placement option considered for each child with a disability is the regular classroom the child would attend if he or she did not have a disability, with appropriate supplementary aids and services. Thus, before a child with a disability can be placed outside of the regular educational environment, the full range of supplementary aids and services that could be provided to facilitate the child's placement in the regular classroom setting must be considered. In addition, IDEA regulations specify that a child with a disability is not to be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

In 2012, the Office of Special Education Programs (OSEP), Office of Special Education and Rehabilitative Services, U.S. Department of Education issued a Dear Colleague Letter reiterating that IDEA and LRE requirements apply to preschool children with disabilities. Each local educational agency (LEA) must ensure that FAPE is provided in the LRE in which a child's unique needs can be met whether or not the LEA operates a public general early childhood program. An LEA may provide special education and related services to a preschool child with a disability in a variety of settings, including their local public preschool program, if the LEA operates one, or, if the LEA does not operate a public program, other community-based settings, such as Head Start or community-based child care programs.

The letter states:

...many LEAs do not offer, or only offer a limited range of, public preschool programs, particularly for three- and four-year-olds. LEAs that do not have a public preschool program that can provide all the appropriate services and supports for a particular child with a disability must explore alternative methods to ensure the LRE requirements are met for that child. These methods may include: (1) providing opportunities for the participation of preschool children with disabilities in preschool programs operated by public agencies other than LEAs (such as Head Start or community based child care); (2) enrolling preschool children with disabilities in private preschool programs for nondisabled preschool children; (3) locating classes for preschool children with disabilities in regular elementary schools; or providing home-based services. If a public agency determines that placement in a private preschool program is necessary for a child to receive FAPE, the public agency must make that program available at no cost to the parent.

Section 504 of the Rehabilitation Act of 1973

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of disability in public and private programs or activities that receive federal funds. This includes the responsibility to ensure that aids, benefits or services are provided in the most integrated setting appropriate to the person's needs. Section 504 applies to public or private preschools, child care centers, Head Start/Early Head Start programs, or family child care homes that receive federal funds either directly or through a grant, loan, or contract. http://www2.ed.gov/policy/rights/reg/ocr/edlite-34cfr104.html#A and http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=96b5fe447fbfd9a1376d4ae589e02944&r=PART&n=pt45.1.84

Americans with Disabilities Act (ADA)

The Americans with Disabilities Act (ADA), in relevant part, protects individuals with disabilities from discrimination based on disability by public entities and public accommodations. Public entities and public accommodations include public or private early childhood programs such as family or center-based child care programs, public or private nursery schools, preschools, and also Head Start and Early Head Start programs run by public or nonpublic agencies. In general, the ADA requires that child care providers not discriminate against persons with disabilities on the basis of disability, that is, that they provide

children and parents with disabilities with an equal opportunity to participate in and benefit from the child care center's services, programs or activities, regardless of whether they receive Federal funds. The ADA also requires that public entities and public accommodations provide their services, programs or activities in the most integrated setting appropriate to the needs of the individual with a disability. Young children in public settings, such as Head Start programs, operated by public entities are covered by Title II of ADA, which prohibits disability discrimination by State and local governmental entities, regardless of whether they receive Federal funds. Young children in most private programs, including small family child care programs, are covered by Title III of ADA, which prohibits disability discrimination by public accommodations, regardless of whether they receive Federal funds. http://www.ada.gov/2010_regs.htm; http://www.ada.gov/childqanda.htm

Head Start Act

Head Start promotes the school readiness of young children from low-income families and supports the mental, social, and emotional development of children from birth to age 5. In addition to educational services, programs provide children and their families with comprehensive services including health, mental health, dental, nutrition, social, and other services. Head Start services are responsive to each child and family's cultural and linguistic heritage. Since 1972, Head Start has required that at least 10 percent of its enrollment opportunities are available to children with disabilities. Head Start and Early Head Start have exceeded this mandate and serve children in inclusive, developmentally appropriate programs.

The most recent Head Start Act reauthorization in 2007 further aligned Head Start and IDEA requirements so that "not less than 10 percent of the total number of children actually enrolled by each Head Start agency and each delegate agency will be children with disabilities who are determined to be eligible for special education and related services, or early intervention services, as appropriate, as determined under the Individuals with Disabilities Education Act." http://eclkc.ohs.acf.hhs.gov/hslc/standards/law

Child Care and Development Block Grant Act (CCDBG)

The CCDBG Act of 2014 requires States to develop strategies for increasing the supply and quality of child care services for children with disabilities. In addition, States must describe how they will coordinate their child care services with other services for young children with disabilities operating at the Federal, State and local levels, including services under Part C and Part B, section 619 of the IDEA. The law also allows States to use funds reserved to improve the quality of child care on professional development opportunities and specialized training on serving children with disabilities and their families. http://www.acf.hhs.gov/programs/occ/ccdf-reauthorization

Resources:

U.S. Department of Justice, Frequently Asked Questions about Child Care and the ADA http://www.ada.gov/childqanda.htm

U.S. Department of Education, Office of Special Education Dear Colleague Letter on Preschool LRE http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/preschoollre22912.pdf

- U.S. Department of Education, Office of Special Education Policy Letter to the Conference of Educational Administrators of Schools and Programs for the Deaf, Inc. President Ronald Stern http://www2.ed.gov/policy/speced/guid/idea/letters/revpolicy/tplre.html
- U.S. Department of Justice & U.S. Department of Education, Dear Colleague Letter on English Learner Students and Limited English Proficient Parents (Jan. 7, 2015) www.ed.gov/ocr/letters/colleague-el-201501.pdf
- U.S. Department of Justice & U.S. Department of Education, Frequently Asked Questions on Effective Communication for Students with Hearing, Vision, or Speech Disabilities in Public Elementary and Secondary School (Nov.12, 2014)

http://www2.ed.gov/about/offices/list/ocr/docs/dcl-faqs-effective-communication-201411.pdf

U.S. Department of Education, Questions and Answers on the ADA Amendments Act of 2008 for Students with Disabilities Attending Public Elementary and Secondary Schools (Jan. 9, 2012) http://www2.ed.gov/about/offices/list/ocr/docs/dcl-504faq-201109.html

Determining Least Restrictive Environment (LRE) Placements for Preschool Children with Disabilities: Reference Points and Discussion Prompts http://www.ectacenter.org/~pdfs/topics/inclusion/determining-lre-placements.pdf

 $IDEA\ Provisions\ Supporting\ Preschool\ Inclusion \\ \underline{http://www.pyramidplus.org/sites/default/files/images/IDEA\%20Provisions\%20Supporting\%20Preschool\ \%20Inclusion.pdf}$

<u>APPENDIX 2: Early Childhood Mental Health Consultation and Positive Behavior Intervention</u> and Support (PBIS) xviii

Early Childhood Mental Health Consultation

Early Childhood Mental Health Consultation (ECMHC) is a multi-level preventive intervention that teams mental health professionals with people who work with young children and their families to improve their social-emotional and behavioral health and development. ECMHC builds the capacity of providers and families to understand the powerful influence of their relationships and interactions on young children's development. Children's well-being is improved and mental health problems are prevented and/or reduced as a result of the mental health consultant's partnership with adults in children's lives. ECMHC includes skilled observations, individualized strategies, and early identification of children with and at risk for mental health challenges. The model also includes strengthening of the teacher-family relationship and connecting young children, teachers, and families to additional mental or behavioral health services, as needed. The amount of time a consultant spends with a program/teacher varies depending on need, but most programs range between three and six months, with visits once or twice a week.

Empirical evidence has found that ECMHC is effective in increasing children's social skills, reducing children's challenging behavior, preventing preschool suspensions and expulsions, improving child-adult relationships, and identifying child concerns early, so that children get the supports they need as soon as possible. In addition, the model has been found effective in reducing teacher stress, burnout, and turnover. Preschool teacher stress and burnout have been previously associated with increased risk of expelling and suspending young children. The National Center of Excellence on Infant and Early Childhood Mental Health Consultation supports States in offering high quality mental health consultation to early care and education programs so they have the tools needed to help children with disabilities to be successful in all settings. In addition, the resources below provide information and resources to implement ECMHC:

- Center for Early Childhood Mental Health Consultation http://www.ecmhc.org/
- Early Childhood Mental Health Consultation: Research Synthesis http://csefel.vanderbilt.edu/documents/rs_ecmhc.pdf
- Georgetown University Center for Child and Human Development: Early Childhood Mental <u>Health Consultation</u> http://gucchd.georgetown.edu/67637.html
- <u>Issue Brief: Integrating Early Childhood Mental Health Consultation with the Pyramid Model</u> http://challengingbehavior.fmhi.usf.edu/do/resources/documents/brief integrating.pdf
- Resource Compendium: What Works? A Study of Effective Early Childhood Mental Health Consultation Programs
- http://gucchd.georgetown.edu/products/78366.html
- Promotion of Mental Health and Prevention of Mental and Behavioral Disorders

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xviii The U.S. Departments of Education and Health and Human Services does not control or guarantee the accuracy, relevance, timeliness, or completeness of this outside information. Further, the inclusion of information or addresses or Web sites for particular items does not reflect their importance, nor is it intended to endorse any views expressed, or products or services offered.

http://store.samhsa.gov/shin/content/SVP05-0151/SVP05-0151.pdf

• What Works? A Study of Effective Early Childhood Mental Health Consultation Programs http://gucchdtacenter.georgetown.edu/publications/ECMHCStudy_Report.pdf

Positive Behavior Intervention and Support (PBIS)

Program-wide positive behavior intervention and support (PBIS), traditionally practiced in school-based settings, is increasingly being implemented in early childhood settings, with promising results. Program-wide PBIS is a systems approach to establishing the social culture and behavioral supports needed for all children in a school or early childhood program to achieve both social and academic success. It is not a specific curriculum; rather it is a group of effective practices, interventions, and evidence-based implementation supports. PBIS strategies are typically organized into three progressively intensive tiers, with specific interventions being executed across primary, secondary and tertiary tiers. The process is facilitated by a knowledgeable behavioral consultant, who, in partnership with the program team, builds the capacity of school personnel to foster the social-emotional and behavioral development of all students.

There are PBIS frameworks specifically for young children. As an example, the Pyramid Model for Supporting Social Emotional Competence in Infants and Young Children provides a tiered intervention framework for supporting social-emotional and behavioral development. The first tier includes practices to promote nurturing and responsive caregiving relationships with the child and high-quality supportive environments. The second tier includes explicit instruction in social skills and emotional regulation for children who require more systematic and focused instruction. The third tier is for children with persistent challenging behaviors that are not responsive to interventions at other tiers and involves implementing a plan of intensive, individualized interventions. The general application of program-wide PBIS in early childhood settings requires programs to establish a team, develop a set of behavioral goals, teach positive behavior, perform functional assessments of challenging behaviors, and use the assessment to construct individualized behavior support plans. For program-wide adoption, programs need administrative support to provide a sustained commitment and ensure training for staff, competent coaching, access to specialists in mental health and behavior, the use of process and outcome data for decision-making, and the development of policies and procedures that support the implementation of a PBIS framework.

In elementary schools, randomized control trials have found that program-wide PBIS reduced discipline referrals and suspensions, and improved fifth grade academic performance. Studies have also found that the use of program-wide PBIS was associated with improved perception of school safety, and improvements in the proportion of students at third grade who met the state reading standard. The emerging research in early childhood settings is promising. Results from the first randomized control study examining the Pyramid Model in early childhood settings found that children enrolled in the intervention classrooms demonstrated improved social skills and reductions in problem behavior. A comparative study found increased positive child behaviors and decreased negative child behaviors in Pyramid Model classrooms, compared to control classrooms. The resources below provide information and resources to implement PBIS:

- Center on the Social and Emotional Foundations for Early Learning http://csefel.vanderbilt.edu/
- Technical Assistance Center on Positive Interventions and Supports https://www.pbis.org/
- <u>Technical Assistance Center on Social Emotional Interventions</u> http://challengingbehavior.fmhi.usf.edu/

APPENDIX 3: Professional Developed Resources to Support Inclusionxix

These materials focus on professional development resources that can be used to prepare personnel to serve young children with disabilities with their typically developing peers. These resources are intended to be used by personnel in State agencies, training and technical assistance systems, institutions of higher education, as well as by local program administrators and staff. The U.S. Departments of Education and Health and Human Services does not control or guarantee the accuracy, relevance, timeliness, or completeness of this outside information. Further, the inclusion of information or addresses or Web sites for particular items does not reflect their importance, nor is it intended to endorse any views expressed, or products or services offered.

National Centers with Resources to Support Professional Development on Inclusion

<u>Center on the Social and Emotional Foundations for Early Learning (CSEFEL)</u> focuses on promoting social-emotional development and school readiness. The website contains <u>training modules</u>, <u>training kits</u>, videos, practical strategies, and research syntheses.

<u>CONNECT:</u> The Center to Mobilize Early Childhood Learning Knowledge developed modules that are practice-focused instructional resources for faculty and other professional development providers. They are designed to build practitioners' abilities to make evidence-based decisions.

<u>The Early Childhood Personnel Center (ECPC)</u> facilitates the implementation of integrated and comprehensive systems of personnel development (CSPD) in early childhood, for all personnel serving infants and young disabilities. Resources include <u>a map of States' standards</u> and <u>quality Indicators for a personnel/workforce system</u>.

<u>Early Childhood Technical Assistance Center (ECTA)</u> provides a variety of national and State resources on <u>inclusion</u>, Least Restrictive Environments (LRE), and <u>Natural Environments</u>. The center developed a compilation of <u>Quality Indicators of Inclusive Programs/Practices</u>: A Compilation of Selected Resources.

<u>Head Start Center for Inclusion</u> created resources to assist personnel in Head Start programs to include children with disabilities. The website contains detailed <u>training modules</u>, <u>PowerPoint presentations</u>, <u>video clips</u>, and additional training resources such as worksheets and group activities.

<u>Head Start Early Learning and Knowledge Center</u> (ECLKC) serves as a portal to all Head Start and Early Head Start funded national centers, training resources, and regulatory requirements.

<u>Head Start National Center for Quality Teaching and Learning</u> provides resources on instruction, transition to kindergarten, and teacher development and a model for practice-based coaching.

<u>Iris Center</u> provides a variety of instructional <u>modules on inclusion</u> and early intervention/early childhood, video vignettes, and activities including resources on <u>accommodations</u>, working with families, transition to preschool and <u>Research Summaries</u>.

<u>National Professional Development Center for Inclusion (NPDCI)</u> developed <u>landing pads with evidence-based practices</u> around Access, Participation, and Supports. <u>Tools</u> were developed to assist States and communities design cross-sector systems of professional development.

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xix The Early Childhood TA Center (ECTA Center) and the Race to the Top – Early Learning Challenge Technical Assistance program (ELC TA) compiled much of this information from federally funded programs, national organizations, and States.

- <u>Planning Matrix for Early Childhood Professional Development</u> can be used as part of a statewide planning process to gather information from representatives of early childhood agencies and initiatives regarding professional development efforts.
- <u>The Landscape: A Statewide Survey for Providers of Professional Development in Early Childhood</u> is designed to help State agency administrators gather information about early childhood professional development activities across various sectors in a state.

National Center on Child Care Professional Development Systems and Workforce Initiatives worked with Child Care and Development Fund grantees, Head Start/Early Head Start leaders, and their partners to design and implement professional development systems that align with other early childhood quality improvement efforts. The center developed the following guides:

- <u>Core Knowledge and Competencies Planning and Implementation Guide:</u> This resource is a planning and implementation guide for developing, revising, and implementing core knowledge and competencies. The guide describes an aligned State and Territory professional development system.
- <u>Distance Learning Planning and Implementation Guide:</u> This resource is a planning and implementation guide for use in developing and strengthening distance learning options as part of an aligned professional development system.
- <u>Technical Assistance Planning and Implementation Guide:</u> This resource is a planning and implementation guide for developing and strengthening technical assistance supports.

<u>The Positive Behavioral Interventions and Supports (PBIS) Technical Assistance Center</u> has resources on establishing, scaling-up, and sustaining the PBIS framework in <u>early childhood programs</u>.

<u>SpecialQuest</u> was funded by the Office of Head Start and the Hilton Foundation and maintains a multimedia training <u>library</u> on inclusion and professional development resources.

The National Center on School-Wide Inclusive School Reform School-Wide Integrated Framework for Transformation (SWIFT) has resources for schools, districts, and States on implementing school wide inclusive reform for students with disabilities.

<u>The Pyramid Model Consortium</u> is a nonprofit created to continue the Pyramid Model work after federal funding for the Technical Assistance Center on Social Emotional Intervention for Young Children (TACSEI) and the Center on the Social and Emotional Foundations for Early Learning (CSEFEL) ended. The consortium provides a variety of training and TA resources.

<u>Technical Assistance Center on Social Emotional Intervention for Young Children (TACSEI)</u> uses evidence-based practices for improving the social-emotional outcomes of young children. It has developed a variety of training resources such as <u>make and take workshops</u>, tools, and materials for implementing the <u>pyramid model</u>.

Professional Associations and Organizations with Resources to Support Inclusion

<u>American Speech-Language Hearing Association</u> (ASHA) has a technical report on <u>Inclusive practices for children and youths with communication disorders</u> and guidelines on the <u>Roles and responsibilities of speech-language pathologists in early intervention</u>.

<u>American Occupational Therapy Association</u> (AOTA) has a practice guide on <u>inclusion</u> and a number of resources on serving young children with disabilities.

American Physical Therapy Association (APTA) has a <u>practice guide</u> on providing physical therapy services under IDEA.

<u>Division for Early Childhood</u> (DEC)'s <u>Inclusive Programs and Practices Special Interest Group</u> (SIG) was created to increase the number and quality of early education, intervention, and community programs that include young children with disabilities, including those with needs for more significant support.

<u>Early Childhood Inclusion: Joint NAEYC and DEC Position Statement</u> from the Division for Early Childhood (DEC) and the National Association for the Education of Young Children (NAEYC).

<u>Kids Included Together (KIT)</u> has compiled a number of resources that are targeted towards supporting inclusion in early childhood programs.

National Association for the Education of Young Children (NAEYC) <u>Early Childhood Workforce Systems Initiative</u> (ECWSI) assists states in developing, enhancing, and implementing policies for an integrated early childhood professional development system. <u>Strategic Directions: Technical Assistance</u> <u>Professionals in State Early Childhood Professional Development Systems</u> (2012) examines the growing field of professional coaches, mentors, and consultants working with early childhood programs.

APPENDIX 4: STATE- DEVELOPED RESOURCES TO SUPPORT INCLUSION XX, XXI

California

<u>BEGINNING TOGETHER</u> was created in collaboration with the California Department of Education's Early Education & Support Division and the WestEd Center for Child and Family Studies as an inclusion support to the <u>Program for Infant/Toddler Care</u> (PITC). The project conducts a <u>"training of trainers"</u> institute, and provides regional outreach activities, written materials, and support to institute graduates.

M.A.P. to Inclusion and Belonging – Making Access Happen is administered by WestEd and funded by the California Department of Education's Early Education & Support Division with a portion of the Federal Child Care Development Fund Quality Improvement Allocation. The project supports the inclusion of children with disabilities ages birth to 21 in child care, after school, and community settings. The website contains child care training resources, a video collection, and links to a local strategic planning initiative.

The California <u>Inclusion and Behavior Consultation (CIBC)</u> is coordinated by WestEd and funded by the Early Education and Support Division of the California Department of Education. The CIBC Network is designed to respond to requests for technical assistance and provide on-site <u>consultation services</u> to staff in early care and education programs. Videos and written resources are available.

<u>Seeds of Partnership: Family Engagement and Professional Development</u> in Special Education is funded by the Special Education Division of the California Department of Education. The project supports family engagement, monitoring requirements and professional development activities aligned with the State Systemic Improvement Plan and Results Driven Accountability initiatives.

The <u>Desired Results access Project</u> supports special educators, administrators, and families in implementing the California Department of Education's Desired Results Assessment System for infants and toddlers with Individualized Family Service Plans (IFSPs) who are reported in the CASEMIS system and all preschool-age children not enrolled in transitional kindergarten or kindergarten who have Individualized Education Programs (IEPs). The project has training <u>modules</u>, <u>webinar materials</u> and a video library.

The <u>Inclusion Collaborative</u> focuses on inclusion of children with disabilities in child care, preschool, and the community. The collaborative provides <u>Education Preparation for Inclusive Classrooms</u>, a <u>video collection</u>, and an <u>Inclusion Support Warm Line and on-site Inclusion Coach support.</u>

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Colorado

As part of its Online Course Resources, the Colorado Department of Education has a <u>video collection</u> with vignettes that support preschool inclusion. <u>Webinar resources</u> and training modules are offered.

As part of their Race to the Top – Early Learning Challenge Grant, the Colorado Department of Human Services' Office of Early Childhood and the Colorado Department of Education offer <u>scholarships</u> for students in State community colleges interested in teaching young children.

Delaware

Delaware <u>MAPS</u> (Meaningful Access Participation &Supports) is a component of Delaware's Early Childhood Inclusion Toolkit and is a project of the State of Delaware Expanding Inclusive Early Intervention Opportunities (EIEIO) Workgroup. The tool kit also includes a <u>Guide to Promoting Inclusion</u> in Early Childhood Programs (2013) which describes quality inclusive environments for children.

Florida

The Florida Training and Technical Assistance System (TATS) is a statewide project funded by the Department of Education, Bureau of Exceptional Education and Student Services, which provides technical assistance to programs serving pre-kindergarten children with disabilities. The project's website contains information on Inclusion/Continuum of Supports, as well as videos, webinars, and podcast resources for literacy and dual language learners. TATS provides a community of practice and site-based consultation. The Florida Expanding Opportunities for Early Childhood Inclusion Initiative in collaboration with the Central Directory created a tool kit called Count Me In.

The <u>Florida Inclusion Network (FIN)</u> collaborates with all districts and schools to provide customized services and supports to students with disabilities. <u>Best Practices for Inclusive Education (BPIE)</u> is a district-level self-assessment tool and process to identify and prioritize areas of need for inclusive practices that enable all students with disabilities to achieve their highest potential.

Idaho

<u>Idaho Stars</u> is a voluntary program that provides training based on national quality standards to child care programs. <u>Online courses</u> on effective communication and collaborative practices with professionals and families and building partnerships with families are offered. The professional development system offers <u>incentives</u> and <u>scholarships</u> as well as site-based coaching strategies. <u>Special Needs</u> is one of their ten key knowledge components.

Illinois

Illinois' early intervention program recently developed a <u>video</u> that shows how early intervention services are provided in inclusive settings, and the important role that the teacher and caregiver plays in working with the early interventionist to support the child and family. Illinois' State Board of Education has developed an <u>inclusion brochure</u> for families and professionals. Illinois has also embedded <u>inclusion as an indicator of quality</u> in its Tiered Quality Rating and Improvement System. At the highest level of quality, Illinois provides an Award of Excellence for Inclusion of Children with Special Needs to programs who show excellence in inclusion.

Maine

The <u>Early Childhood Settings Inclusion Toolkit</u> developed by the Maine's <u>Expanding Inclusive</u> <u>Opportunities (MEIO) Initiative</u>, provides videos on <u>inclusion</u> and <u>universal design</u> and <u>considerations</u> for reviewing program practices.

Maryland

<u>Making Access Happen</u> is a project of the Maryland State Department of Education and the Johns Hopkins University School of Education. It is designed to increase the participation of three to five year old children with disabilities in public and private community-based early care and education programs by providing teachers and service providers with job embedded professional learning opportunities through a reflective <u>coaching model and mentoring</u>, a <u>Reflective Coaching and Collaboration Checklist</u>, <u>communities of practice</u>, and <u>online modules</u>. Mini grants to districts are available through incentives.

The <u>Maryland Social Emotional Foundations for Early Learning MD (SEFEL)</u> initiative represents a partnership between the University of Maryland and the Maryland State Department of Education. The project features <u>resources for coaching</u> and <u>training modules</u>.

Massachusetts

Massachusetts has collaborated with families, special educators, administrators, other state agencies, and community partners through authentic stakeholder engagement activities to create a mission and vision for early childhood special education that outlines the Education Department's belief in individualized supports and services that promote young children's participation in the general curriculum and all aspects of the school.

Minnesota

The <u>Center for Inclusive Child Care</u> is a centralized, comprehensive resource network supporting inclusive care for children in community settings. The center provides <u>inclusion coaching and</u> consultation services, online modules, and tool kits.

<u>Reaching Potential Through Recommended Practices (RP²)</u> is an intensive technical assistance initiative offered by the <u>ECTA Center</u>. The initiative is designed to implement, sustain and scale up the use of selected DEC Recommended Practices that are aligned with improving child engagement.

Minnesota Centers of Excellence for Young Children with Disabilities supports a regionalized approach to the professional development system in Minnesota. Each region is coordinated by a Regional ECSE Professional Development Facilitator responsible for coordinating professional development activities. The center offers an online course, Bridging Education and Mental Health provides eight modules including a module on Environments and Experiences that Enhance Children's Development. Additional online courses and E-modules are available.

<u>Center for Early Education and Development</u> (CEED) offers a variety of <u>online courses</u> including a course on <u>Working with Parents of Young Children: Considerations for Special Populations</u>.

New Hampshire

The Preschool Technical Assistance Network (PTAN) is a statewide technical assistance and support network that receives funding from Bureau of Special Education, the Child Development Bureau, and

school districts. The <u>PTAN Child Care Inclusion Project</u> provides <u>consultation</u>, <u>training</u>, <u>and technical assistance</u>. <u>PTAN Partnerships for Preschool Inclusion: Self-Evaluation Tool</u> provides a framework for discussion that promotes partnerships and teaming.

North Carolina

The North Carolina Early Learning Network (NC-ELN) Inclusion Initiative, funded by the Department of Public Instruction, has developed a variety of inclusion resources and planning tools, including a planning guide, training modules and a self-assessment to facilitate the development of comprehensive community plans and agreements to encourage school districts to work within their communities to expand inclusive placement opportunities. Job embedded professional development and technical assistance is offered.

Rhode Island

The <u>Center for Early Learning Professionals</u> gives early childhood programs and providers the tools, support, and resources they need to provide high-quality care and education to Rhode Island's youngest children. They have developed an <u>inclusive practices tip sheet</u> for programs and providers.

Utah

The <u>Child Care Professional Development Institute</u> at Utah State University offers recognition through an <u>All Means All Inclusion Award</u> for licensed centers and family child care programs that have completed a Special Needs Endorsement. Awardees must provide information about how they support inclusion and have achieved at least two of specified criteria regarding inclusive practices.

Virginia

The <u>Virginia Intervention Professional Development Center provides an online module (called Journey to Inclusion)</u>, <u>videos</u>, and a <u>resource landing pad</u>. The Virginia Cross Sector Professional Development Team <u>website</u> provides information for teaching all students together and supporting Professional Development providers.

Specialized Certification, Credentialing, and Competencies

Delaware

An <u>Inclusion Certificate</u> is offered to early childhood professionals by the Delaware Department of Education, in collaboration with the Delaware Institute for Excellence in Early Childhood.

Florida

<u>Florida's Targeted Competencies for Specialists Supporting Inclusion</u> was developed by the Florida Expanding Opportunities for Early Childhood Inclusion Team to ensure that specialists who support children from birth through age 5 with disabilities and their families within and across early childhood program sectors have the necessary knowledge, skills, and dispositions.

Oregon

The <u>Core Body of Knowledge for Oregon's Childhood Care and Education Profession</u> includes a section on inclusion on pages 43-45.

Rhode Island

Rhode Island's Workforce Knowledge and Competencies for Early Childhood Teachers and Early Intervention/Early Childhood Special Educators articulates the essential skills and knowledge for educators by defining how to promote young children's healthy development and learning.

Rhode Island Workforce Knowledge and Competencies for Early Childhood Teacher Assistants articulates the essential skills and knowledge that teacher assistants who work with young children need to know, understand, and be able to do to promote young children's healthy development and learning.

Rhode Island Early Learning and Development Standards articulate the shared expectations for what young children should know and be able to do, and provide a common language for measuring progress towards achieving specific learning goals.

Planning Tools and Self-Assessments

New Hampshire

<u>PTAN Partnerships for Preschool Inclusion: Self-Evaluation Tool</u> is a self-evaluation tool that is designed to provide a framework for discussion that promotes partnerships to benefit young children with disabilities and their families.

North Carolina

The North Carolina Early Learning Network (NC-ELN) Inclusion Initiative, funded by the Department of Public instruction, has developed a variety of <u>inclusion resources and planning tools</u> including the <u>North Carolina Preschool Inclusion Initiative</u>: <u>Self-Assessment Tool</u>, which provides a framework for discussion that promotes partnerships.

Pennsylvania

<u>Pennsylvania Preschool Inclusion: Self-evaluation Tool</u> is a self-evaluation tool that is designed to provide a framework for discussion that promotes partnerships to benefit young children with disabilities and their families.

APPENDIX 5: Resources for Families of Children With and Without Disabilities xxii

Information and resources for families of children with disabilities

Center for Disease Control and Prevention: Family Caregivers

General caregiving guide and resources for families of children and adults with disabilities. http://www.cdc.gov/ncbddd/disabilityandhealth/family.html

Center for Parent Information and Resources (CPIR)

CPIR serves as a central resource for families of children with disabilities. The site includes links to parent centers in states that provide information and training about disabilities; parent and child rights under IDEA and other relevant laws; and other local and national resources. http://www.parentcenterhub.org/

Components of Inclusive Education

Kids Together is a non-profit information and resource center focused on removing barriers that exclude people with disabilities. This page includes talking points and resources for creating inclusive learning settings from early childhood through the school age years. http://www.kidstogether.org/index.htm

Council for Exceptional Children (CEC)

CEC works to improve the educational success of children and youth with disabilities and/or gifts and talents.

http://www.cec.sped.org/

Disability.gov

The Federal government's website for information on disability programs and services nationwide. https://www.disability.gov/

The Division for Early Childhood (DEC)

Promotes policies and advances evidence-based practices that support families and enhance the optimal development of young children who have or are at risk for developmental delays and disabilities. DEC is an international membership organization for those who work with or on behalf of young children with disabilities and other special needs and their families

http://www.dec-sped.org/

IDEA Part C and Part B

The following links provide contact information on State Part C, Part B, 619, and Part B agencies.

http://www.ectacenter.org/contact/ptccoord.asp

http://www.ectacenter.org/contact/619coord.asp

http://www.nasdse.org/MeettheDirectors/tabid/60/Default.aspx

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Head Start Center for Inclusion: For Families

This page was designed specifically for families of young children with disabilities participating in Head Start and Early Head Start, but has widely applicable resources for supporting and including children with disabilities at home and in classroom settings.

http://depts.washington.edu/hscenter/families

National Association of Parents with Children in Special Education: Resources for Parents (NAPCSE)

NAPCSE provides a resource library of sites and topics identified by practitioners as the most relevant issues in the field, and a professional directory to connect with local resources.

http://www.napcse.org/resources.php

National Community of Practice on Supporting Families

Working across and within States to create policies, practices, and systems to better assist and support families that include a member with developmental disabilities across the lifespan. http://supportstofamilies.org/

National Council on Disability (NCD): Chapter 13 Supporting Parents with Disabilities and Their Families in the Community

NCD is an independent federal agency committed to disability policy leadership. This NCD publication reviews the types of supports needed for children with disabilities and their families to be meaningfully included in community settings.

http://www.ncd.gov/publications/2012/Sep272012/Ch13

U.S. Department of Education Resources for Parents about Disabilities

This is a collection of parent-focused technical assistance resources and resources about special education law and programming. State disability resources and organizations are also included on this resource list. http://www2.ed.gov/parents/needs/speced/edpicks.jhtml

Family-to-Family Resources

Early Intervention Family Alliance

The Early Intervention Family Alliance is a national group of family leaders dedicated to improving outcomes for infants and toddlers with disabilities and their families. The EIFA works to assure meaningful family involvement in the development of Part C policies and their implementation at community, state and federal levels.

http://eifamilyalliance.org/

Family Voices

Family-to-family organizations in each state that connect experienced parents of children with special health care needs to parents coping with new diagnoses to navigate health care and school systems. Many of these organizations are federally funded Health Information Centers (HICs) that are non-profit and family-staffed that provide support and information to families of children and youth with special health care needs and the professionals who serve them.

http://www.familyvoices.org/states

National Federation of Families for Children's Mental Health

A national, family-run organization linking state chapters that focuses on the issues of children and youth with emotional, behavioral, and mental health needs and their families. The organization emphasizes advocacy and giving families a voice in the formation of national policy, and services and support for children and youth with mental health needs and their families. http://www.ffcmh.org/

Universal Design

CAST

CAST is a non-profit that works to expand learning opportunities for all individuals through Universal Design for Learning (UDL). UDL is a framework to improve and optimize teaching and learning through flexible curricula for diverse learners based on how people learn. http://www.cast.org/index.html#.VTV-iH_D_ZQ

University of Maine's Inclusive Design Page

This page includes resources and considerations for designing environments so that the greatest number of people can use them without the need for adapting. Questions and resources specific to early childhood settings include how universal design applies to planning the curriculum, and the development of teaching practices and materials so the widest range of learners can participate. http://umaine.edu/expandinclusiveopp/what-is-universal-design/

Identifying a high-quality early learning program

Child Care Aware (CCA):

CCA is a research and advocacy group that houses a child care search engine. CCA has also provided information about health and safety, curriculum, and developmentally appropriate practices in early care and education settings. http://www.childcareaware.org/

Easter Seals ABCs of Choosing Child Care

Easter Seals provides services, education, outreach, and advocacy so that people living with autism and other disabilities can live, learn, work, and play in our communities. This list of questions was developed to help families research child care facilities.

http://es.easterseals.com/site/PageServer?pagename=ntl_abc

Developmental and Behavioral Health Screening

Birth to 5: Watch Me Thrive!

This is a coordinated federal effort to encourage healthy child development, universal developmental and behavioral screening for children, and support for the families and providers who care for them. There are links to resources for families and different kinds of providers serving infants, toddlers, and young children.

http://www.acf.hhs.gov/programs/ecd/child-health-development/watch-me-thrive

Centers for Disease Control and Prevention (CDC): Learn the Signs, Act Early

This CDC site has resources for tracking children's milestones from birth through age five. If parents have concerns about their children's development, suggested follow-up steps are provided. http://www.cdc.gov/ncbddd/actearly/

<u>Easter Seals Offers a Free, Confidential Online Screening Tool: Ages and Stages Questionnaire, Third Edition (ASQ-3)</u>

This screening tool will help families guide and keep track of their children's growth and development during the first five years. The questionnaire takes 10-20 minutes and families are encouraged to come back and learn about their child's development over time.

http://www.easterseals.com/mtffc/asq/

Appendix 6: Resources for State and Program Administrators xxiii

Leadership and Policy Development

Policy Statement on Expulsion and Suspension Policies in Early Childhood Settings

The purpose of this policy statement is to support families, early childhood programs, and States by providing recommendations from the U.S. Departments of Health and Human Services and Education for preventing and severely limiting expulsion and suspension practices in early childhood settings.

 $\frac{http://www.acf.hhs.gov/programs/ecd/child-health-development/reducing-suspension-and-expulsion-practices}{}$

Joint position statement on early childhood inclusion by the Division for Early Childhood (DEC) and the National Association for the Education of Young Children (NAEYC)

This joint position statement (2009) was one of the first to offer a definition of early childhood inclusion that can be used to determine the key components of high-quality, inclusive ECE programs.

 $\frac{http://dec.membershipsoftware.org/files/Position\%20Statement\%20and\%20Papers/Inclusion\%20Position\%20Statement.pdf}{\%20statement.pdf}$

Connecting Health, Human Services and Education Resources

Help Me Grow (HMG) National Center

HMG assists states in identifying at-risk children, and helps families find community-based programs and services. HMG is a system for improving access to existing resources and services for young children from birth to age eight. The website for the national center has resources for care coordination and cross-system collaboration.

http://www.helpmegrownational.org/index.php

Medical Home Initiatives and Resources by State created by the National Center for Medical Home Implementation (NCMHI)

Medical homes represent a partnership between the patient, family, and primary provider in cooperation with specialists and community providers. This state resource map provides an overview of pediatric medical home initiatives occurring through Medicaid and the Children's Health Insurance Program (CHIP). By learning about ongoing pediatric medical home initiatives in your state, state administrators can gain insight into how to coordinate efforts across multiple systems.

http://www.medicalhomeinfo.org/state_pages/

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Planning for Professional Development Across Sectors

<u>The Early Childhood Technical Assistance Center's (ECTA) Website on Inclusion in Least Restrictive Settings</u>

This website includes a link to an archived webinar series with information about supports and resources to promote early childhood inclusion. Other helpful resources include understanding Least Restrictive Environment (LRE) requirements and determining appropriate placements, and a collection of resources summarizing the research on preschool inclusion.

http://ectacenter.org/topics/inclusion/default.asp

National Professional Development Center for Inclusion's (NPDCI) Planning Matrix for Early Childhood Professional Development

This matrix is used as part of a state-wide planning process to gather information from representatives of key early childhood agencies and initiatives about their agencies' professional development efforts. The tool is meant to provide agencies with a better understanding of statewide professional development efforts and potential areas for collaboration.

http://npdci.fpg.unc.edu/resources/planning-matrix-early-childhood-professional-development

NPDCI's The Landscape: A Statewide Survey for Providers of Professional Development in Early Childhood

This survey was designed to help state agencies gather information to compile a descriptive landscape of professional development in early childhood across multiple sectors.

http://npdci.fpg.unc.edu/resources/planning-and-facilitation-tools/files/NPDCI-Landscape-survey-June2011

<u>The Office of Child Care's National Child Care Professional Development Systems & Workforce</u> Initiatives:

This national TA center builds on state and territory capacities to prepare and sustain a qualified workforce across ECE sectors

https://childcareta.acf.hhs.gov/professional-development-systems-and-workforce-initiatives

¹ 2013 Part B Child Count and Educational Environments Data File. Accessed on 4/17/15 at: http://www2.ed.gov/programs/osepidea/618-data/state-level-data-files/index.html

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