



## CHILD CARE LAW CENTER

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## Questions and Answers: IDEA & Child Care

### 1. What is the IDEA?

The Individuals with Disabilities Education Act (IDEA) guarantees children with disabilities the same access to education as children who do not have disabilities.<sup>1</sup> In 1975, Congress passed the IDEA in response to frequent discrimination against children with disabilities in public school systems. All states must meet the minimum *federal* IDEA standards regarding the educational rights of children with disabilities. However, *state* laws can expand these rights.

### 2. Who is eligible for services under the IDEA?

Children ages 0 to 21 with certain disabilities are eligible.

- *Infants and Toddlers* – are eligible for Early Intervention (EI) services under the IDEA. EI services may be necessary if a child is experiencing developmental delays or has a diagnosed physical or mental condition which has a high probability of resulting in developmental delay.<sup>2</sup> Some states have created a third eligibility category of children at-risk of developmental delays.<sup>3</sup>
- *School-age and Children Attending Preschool* – are eligible if found to have mental retardation, hearing impairments, speech or language impairments, visual impairments, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities, which as a result need special education and related services.<sup>4</sup>

### 3. How do families apply?

If a parent feels her child is eligible for services under the IDEA, she should contact her local

school district or EI agency. Local educational agencies (LEA) have an obligation under federal law to “actively and systematically seek out” all persons aged 3 to 21 who would be eligible for special education.<sup>5</sup> The lead agency for EI services has a similar “child find” obligation for infants and toddlers.<sup>6</sup> Child care providers can refer children they think may be eligible, although the family must consent in writing to an assessment.

### 4. What is an IEP?

- An Individualized Educational Program (IEP) is an agreement that outlines a child’s special education and related services.<sup>7</sup> An IEP is for preschool (ages 3 to 5) and school-age children.
- A team consisting of parents,<sup>8</sup> regular and special education teachers, a representative from the LEA, and anyone else the parent or local school district feel should be present, formulate the IEP at a collaborative meeting.<sup>9</sup>
- The IEP must include the child’s present levels of performance, measurable annual goals, and the child’s special education and related services.<sup>10</sup> If a child does not participate in the regular classroom or in general nonacademic and extracurricular activities, the IEP must explain why and list supports and program modifications to allow participation in the general classroom.<sup>11</sup> A parent must provide written consent to the services to be provided.<sup>12</sup>
- The team reviews the IEP at least annually, or when either a parent or a teacher request a meeting for a new assessment, lack of anticipated progress by the child, or other matters.<sup>13</sup>

### 5. What is an IFSP?

- An Individualized Family Service Program (IFSP) is very similar to an IEP, but an IFSP is for EI children, ages 0 to 3.
- An IFSP may include the infant/toddler's present levels of development, the major expected outcomes for the infant/toddler and her family, the specific EI services necessary to meet the needs of the infant/toddler and her family, the natural environments in which the services will be carried out, and steps to help the infant/toddler transition to preschool or other services.<sup>14</sup> A parent must provide written consent to the services to be provided.<sup>15</sup>
- An IFSP is evaluated annually and is reviewed at least every 6 months or more frequently if the infant/toddler or family needs it.<sup>16</sup>

### 6. What role can child care providers play in the IEP/IFSP process?

At the discretion of the parent or agency, other individuals with “knowledge or special expertise regarding the child,”<sup>17</sup> (IEP) or “as appropriate, persons who will be providing services to the child or family”<sup>18</sup> (IFSP) may participate in the IEP or IFSP meeting and planning. This could include child care providers. Child care providers can give input on services or technology that would enable the child to participate in their program.

### 7. What placement can families and children obtain under the IDEA?

- The IDEA is designed to guarantee children with disabilities of all ages the opportunity to participate, learn, interact, and succeed in the school setting.
- Children with disabilities in school are assured a *Free Appropriate Public Education* (FAPE). FAPE is not tied to funding and must be based on the child's educational need.<sup>19</sup> Placement is based on the child's individual needs and skills as outlined on her IEP.<sup>20</sup>
- Inclusion is an important goal of the IDEA. Also, for *preschool* and *school-age children* with disabilities, the IDEA requires that they be placed in the *Least Restrictive*

*Environment* (LRE).<sup>21</sup> LRE applies to extracurricular and nonacademic activities as well,<sup>22</sup> which can include child care.

- *EI (ages 0 to 3)* has a “*Natural Environment*” requirement similar to the LRE.<sup>23</sup> A “natural environment” includes a child’s home, “community settings in which children without disabilities participate,”<sup>24</sup> and “settings that are natural or normal for the child’s age peers who have no disabilities,”<sup>25</sup> such as child care.

### 8. What related services can families and children obtain under the IDEA?

Families and children can receive any service that is necessary to help a child benefit from her special education program.<sup>26</sup> All services under the IDEA for children ages 3 to 21 are free<sup>27</sup> and based on each child’s educational need, not the child’s disability.<sup>28</sup> Some examples of these services are transportation, speech pathology, psychological services, physical and occupational therapy, counseling services, and school health services. For children receiving EI services, some states charge fees based on a sliding scale and/or require access to public/private insurance.<sup>29</sup>

### 9. Can a family get child care or afterschool care through their IEP?

- Children with disabilities, *from ages 3 to 5*, may receive preschool or child care services as part of their IEP. It is also possible to include consultation services between the therapists working with a child and the child’s preschool or child care programs in an IEP. The IDEA makes grants available to states to extend special education services to eligible preschool aged children.<sup>30</sup> Some school districts may try to limit reimbursement for placement in private preschools, but this is not allowed if the placement results from the IEP.<sup>31</sup>
- If afterschool care or extended day is a related service that is necessary for a *school-age child* to benefit from her special education, then a family could receive afterschool care through an IEP.<sup>32</sup> The related service must be connected to the child’s education and needs, not family or

other issues, *except* in the case of EI where a family's needs and strengths as well as the child's are expressly considered.<sup>33</sup>

- A portion of the cost of child care may be paid for as part of an IFSP.<sup>35</sup> For example, where a child has socialization with typically developing children as a goal in his/her IFSP, the state agency can pay for the time in child care when the child is receiving this support.

#### 10. What assistive technology is available to child care providers for children with disabilities under the IDEA?

- Assistive technology means any equipment, off-the-shelf or customized, used to increase, maintain, or improve the functional capacities of children with disabilities.<sup>36</sup> Some examples of assistive technology are computers, transportation aids, glasses, and hearing aids.
- If assistive technology helps a student benefit from her special education placement, including child care, then the technology is guaranteed by the school

district.<sup>37</sup> Parents do not have to pay for the equipment.<sup>38</sup>

- The need for assistive technology must be considered in every child's IEP,<sup>39</sup> and it is an EI<sup>40</sup> service that must be considered in the IFSP process. If the IEP team decides that the child needs access to those devices in non-school settings, such as child care, in order to achieve FAPE, the LEA must allow the child to use a school-purchased assistive technology device at home or in other settings.<sup>41</sup>

#### 11. What rights do parents have if the school district denies a child services or a parent does not like her child's placement?

Parents or the child's representative have the right to mediation and/or a due process hearing if they disagree with their child's IEP or on any matter relating to the child's evaluation, placement, and services under the IDEA.<sup>42</sup> See the resource box for agencies you can contact about more information or assistance.

#### Useful Resources

- **Call the Child Care Law Center at (415) 394-7144** if you would like information about child care issues. We are a national and California child care support center for legal services programs. The following are some of our legal services:
  - Answer legal questions regarding child care on Monday and Thursday from 12p.m. to 3p.m.
  - Write many useful legal and policy publications. Visit our website at [www.childcarelaw.org](http://www.childcarelaw.org).
  - Conduct trainings for parents, teachers, community agencies, and others on the Americans with Disabilities Act and other disability laws.
- **Call the National Disability Rights Network**, a national voluntary membership organization for the federally mandated nationwide network of disability rights agencies, protection and advocacy systems, and client assistance programs, at **(202) 408-9514** or visit their website at [www.napas.org](http://www.napas.org) to find out where the office is nearest you.
- **Contact the Parent Training and Information Centers and Community Groups**, which provide training and information to parents of infants, toddlers, school-aged children, and young adults with disabilities, and the professionals who work with their families in your state. To reach the parent center in your state, call the **Technical Assistance Alliance for Parent Centers (the Alliance)** at **(888) 248-0822** or visit their website at [www.taalliance.org](http://www.taalliance.org).
- **Call Disability Rights Education & Defense Fund (DREDF)**, a national law and policy center dedicated to protecting and advancing the civil rights of people with disabilities, at **(510)644-2555** or visit their website at [www.dredf.org](http://www.dredf.org).
- **Contact Easter Seals Disability Services**, a national non-profit that provides both resources and inclusive child care services. A list of centers and services can be found at their website: <http://www.easterseals.com>.

*This document is intended to provide general information about the topic covered. It is believed to be current and accurate as of June 2009, but the law changes often. This document is made available with the understanding that it does not render legal or other professional advice. If you need legal advice, you should seek the services of a competent attorney.*

## Endnotes

- <sup>1</sup> 20 U.S.C. § 1400 et. seq.
- <sup>2</sup> 20 U.S.C. § 1432(5).
- <sup>3</sup> 20 U.S.C. § 1432(5)(B).
- <sup>4</sup> 20 U.S.C. § 1401(3); see also 34 C.F.R. § 300.7(a)(1) (further specifying eligibility criteria for special education including multiply handicapped).
- <sup>5</sup> 20 U.S.C. § 1412(a)(3).
- <sup>6</sup> 20 U.S.C. § 1435(a)(5).
- <sup>7</sup> 20 U.S.C. § 1414(d) (IEP); 20 U.S.C. § 1436 (IFSP).
- <sup>8</sup> Agencies must take extra steps to include parents if they cannot attend, such as enabling them to participate via conference call. 34 C.F.R. § 300.345.
- <sup>9</sup> 20 U.S.C. § 1414(d)(1)(B).
- <sup>10</sup> 20 U.S.C. § 1414(d)(A).
- <sup>11</sup> 20 U.S.C. § 1414(d)(1)(A)(iv).
- <sup>12</sup> 20 U.S.C. § 1436(e).
- <sup>13</sup> 20 U.S.C. § 1414(d)(4).
- <sup>14</sup> 20 U.S.C. § 1436(d).
- <sup>15</sup> 20 U.S.C. § 1436(e).
- <sup>16</sup> 20 U.S.C. § 1436(b).
- <sup>17</sup> 20 U.S.C. § 1414(d)(B).
- <sup>18</sup> 34 C.F.R. § 303.343(a)(1).
- <sup>19</sup> 20 U.S.C. § 1412(a)(1); 34 C.F.R. § 300.103.
- <sup>20</sup> 20 U.S.C. § 1414(d)(3)(A).
- <sup>21</sup> 20 U.S.C. § 1412(a)(5).
- <sup>22</sup> 20 U.S.C. § 1414(d)(1)(A)(iii).
- <sup>23</sup> 20 U.S.C. § 1432(4)(G).
- <sup>24</sup> Id.
- <sup>25</sup> 34 C.F.R. § 303.18.
- <sup>26</sup> 20 U.S.C. § 1414(d)(1).
- <sup>27</sup> 20 U.S.C. § 1401(9).
- <sup>28</sup> 20 U.S.C. § 1412(a)(1); 34 C.F.R. § 300.103.
- <sup>29</sup> INSERT CITE
- <sup>30</sup> 20 U.S.C. § 1419.
- <sup>31</sup> Id. § 1412(a)(10)(B); see also 34 C.F.R. § 300, App. B.
- <sup>32</sup> 20 U.S.C. § 1401(26).
- <sup>33</sup> 20 U.S.C. §§ 1436(a).
- <sup>35</sup> 20 U.S.C. § 1436(d).
- <sup>36</sup> 20 U.S.C. § 1401(1).
- <sup>37</sup> 20 U.S.C. § 1412(a)(12)(B)(i).
- <sup>38</sup> Id.
- <sup>39</sup> 20 U.S.C. § 1414(d)(3)(B)(v).
- <sup>40</sup> 34 C.F.R. § 303.12(d)(1).
- <sup>41</sup> 34 C.F.R. § 300.105(b).
- <sup>42</sup> 20 U.S.C. § 1415(b).

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