

SPECIAL EDUCATION RIGHTS AND RESPONSIBILITIES

Chapter 11

Information on Preschool Education Services

From a 13-Chapter Manual

Available by Chapter and in Manual Form

Written by:

Community Alliance for Special Education (CASE)

and

Protection and Advocacy, Inc. (PAI)

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Federal special education law was significantly amended by Congress in 1997 and further clarified by regulations from the U.S. Department of Education in March 1999. The California Education Code has been amended to reflect some of the federal law changes but not all. In October 1999, Governor Davis vetoed a significant piece of state legislation which would have further amended California law to be consistent with federal law. Therefore, in certain circumstances where it provides greater protections or entitlements, California law will continue to control special education pupils' rights unless it is amended to completely conform to federal law.

CASE and PAI will monitor the development of conforming state law and regulations, so that revised state laws and regulations can be incorporated into later supplements and editions of SERR.

For further information on the development of federal and state law and regulation, or clarification about IDEA implementation, please contact CASE or PAI.

COMMUNITY ALLIANCE FOR SPECIAL EDUCATION (CASE) provides legal support, representation, technical assistance consultations, and training to parents throughout the greater San Francisco Bay Area whose children need appropriate special education services. Trained advocates and attorneys assist parents at IEP meetings, Mediation Conferences and Due Process Hearings. CASE also provides free consultations about special education rights and services to parents and professionals by telephone or face-to-face. CASE is a nonprofit organization serving all children with disabilities who need or may need special education services. For more information, contact:

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SPECIAL EDUCATION RIGHTS AND RESPONSIBILITIES

Chapter 11

Information on Preschool Education Services

1. What is the federal law that requires preschool education services?

Public Law (PL) 99-457, passed in October 1986, is a federal law that expands services for children from birth to five years old who need special education. PL 99-457 amends and becomes a part of PL 94-142 — the Individuals with Disabilities Education Act (IDEA). Title II of PL 99-457 makes grants available to states to extend the protections and services of PL 94-142 to all 3- to 5-year-old children who need special education. [20 United States Code (U.S.C.) Sec. 1419.]

2. What is the purpose of preschool education services?

Congress defined the purpose of PL 99-457 as follows:

- (1) To enhance the development of infants and toddlers with disabilities and to minimize their potential for delay;
- (2) To reduce educational costs by minimizing the need for special education and related services after handicapped infants and toddlers reach school age;
- (3) To minimize the likelihood of institutionalization of handicapped individuals and maximize the potential for their independent living in society; and
- (4) To enhance the capacity of families to meet the special needs of infants and toddlers. [20 U.S.C. Sec. 1431.]

3. Are all school districts responsible for full implementation of services for 3- to 5-year-old children?

Yes. Under current California law, **all** school districts have a mandate to provide special education and services for all eligible children with exceptional needs

between the ages of three and five years, inclusive. [Cal. Ed. Code Secs. 56001(b) and 56440(c).]

4. What are the eligibility criteria for children with disabilities who are 3 to 5 years old?

Eligibility criteria for preschool children are linked to the criteria for school-age children. To be eligible for special education, a child must have one of the following disabling conditions:

- (1) Autism;
- (2) Deaf-blindness;
- (3) Deafness;
- (4) Emotional disturbance;
- (5) Hearing impairment;
- (6) Mental Retardation;
- (7) Multiple disabilities;
- (8) Orthopedic impairment;
- (9) Other health impairment (includes attention deficit disorder or attention deficit hyperactivity disorder);
- (10) Specific learning disability;
- (11) Speech or language impairment in one or more of voice, fluency, language, and articulation;
- (12) Traumatic brain injury;
- (13) Visual impairment; or
- (14) Established medical disability.

All of these conditions except (14) are defined in 34 Code of Federal Regulations (C.F.R.) Section 300.7, and discussed in 5 California Code of Regulations (C.C.R.) Section 3030.

An “established medical disability” is defined in California Education Code (Cal. Ed. Code) Section 46441.11(d) as a disabling medical condition or congenital syndrome that the individual education program (IEP) team determines has a high predictability of requiring special education and services.

In addition to meeting one or more of the qualifying conditions, to qualify for special education, a child must need specially designed instruction or services and must also have needs that cannot be met with modification of a regular environment in the home or school, or both, without ongoing monitoring or support as determined by an IEP team. [Cal. Ed. Code Sec. 56441.11(b)(2)&(3).]

A child is not eligible for special education and services if she does not otherwise meet the eligibility criteria and her educational needs are due primarily to:

- (1) Unfamiliarity with the English language;
- (2) Temporary physical disabilities;
- (3) Social maladjustment; or
- (4) Environmental, cultural, or economic factors.

[Cal. Ed. Code Sec. 56441.11(c).]

5. If I think my 3- to 5-year-old child needs services, who should I contact?

You should write a letter to your local school administrator (for example, the principal or special education program consultant) to request an assessment for your child. Your district must assess your child. [Cal. Ed. Code Secs. 56029, 56300-56329; 5 C.C.R. Sec. 3021.] By state law, your school district must give you an assessment plan within 15 days of receipt of your written request for special education services, unless the request was made 10 days or less before the end of the school year, in which case the plan must be developed within 10 days of the start of the next school year. [Cal. Ed. Code Sec. 56321(a).] You then have 15 days to respond to or approve the assessment plan. During that time, you can request assessment in additional areas. No one can assess your child unless you give consent for the assessment in writing. [Cal. Ed. Code Sec. 56321(c).] See Chapter 2, *Information on Evaluations and Assessments*.

When standardized tests are considered invalid for children between the ages of three and five years, assessors should use alternative testing methods. Alternatives might include, for example, scales, instruments, observations, and interviews, as specified in the assessment plan. [Cal. Ed. Code Sec. 46441.11(e).]

An IEP must be developed as a result of the assessment within 50 days from the date the district receives your written consent for assessment (not counting days between school sessions or terms). If the request was made 20 days or less before

the end of the regular school year, the assessments and IEP must be completed within 30 days after the next school year begins. [Cal. Ed. Code Sec. 56344.]

6. What instructional services are available to my preschool-aged child?

Services available to 3- to 5-year-old children must meet the unique needs of your child in accordance with IDEA. The child's IEP must include these services and a statement of areas of need. See Chapter 4, *Information on IEP Process*. The rights and services for 3- to 5-year-old children under IDEA are the same as those for children aged 5 to 21. Under California law, services for 3- to 5-year-old children may be provided individually or in small groups. Services may include:

- (1) Observation and monitoring of the child;
- (2) Activities developed to conform with the child's IEP and to enhance the child's development;
- (3) Consultation with family, preschool teachers and other service providers;
- (4) Assistance to parents in coordinating services;
- (5) Opportunities for the child to develop play and pre-academic skills; and
- (6) Access to developmentally appropriate equipment and specialized materials.

[Cal. Ed. Code Sec. 56441.3(a).]

7. Is my 3- to 5-year-old child entitled to related services?

Yes. Your child is entitled to all the related services provided by IDEA. Related services include parent counseling and training to help you understand your child's special needs and development. [Cal. Ed. Code Sec. 56441.3(a)(7).] See Chapter 5, *Information on Related Services*.

8. If my child is eligible for special education services, where will she receive them?

Your child, if eligible, may receive services at a public or private non-sectarian preschool, a child development center, family day care home, your own home, or a special preschool where both children with disabilities and children without disabilities attend. In California, the state can contract with Head Start programs to provide special education services to children between three and five years old.

[Cal. Ed. Code Secs. 56441.4(a)-(f) and 56443(a).]

9. How do the least restrictive environment provisions of federal law relate to preschool children with disabilities?

The IDEA requirements regarding the education of children in the least restrictive environment (LRE) apply to preschool children with disabilities. [34 C.F.R. Sec. 300.552.] However, if the local education agency (LEA) has no preschool program for children without disabilities, there is no federal requirement to establish programs for children without disabilities for the sole purpose of implementing the IDEA's LRE requirements for children with disabilities. Similarly, there is no federal requirement for an LEA to establish extensive contract programs with private schools which serve both children with disabilities and children without disabilities solely to implement the LRE requirements. Nevertheless, the U.S. Department of Education has emphasized the requirement that the full range of placement options be available to preschool-age special education students. "The full continuum of alternative placements at 34 C.F.R. Sec. 300.551. [regular classes, special classes, special schools, home and hospital instruction], including integrated placement options, such as community-based settings with typically developing age peers, must be available to preschool children with disabilities." [64 Fed. Reg. 12639 (3/12/99).]

In jurisdictions where there are no LEA programs for preschoolers without disabilities, the LRE requirement could be met by an alternative means. Several alternatives are possible: preschool programs serving children without disabilities (Head Start, for example) to which the program for children with disabilities may be linked on even a part-time basis; special needs preschool program may be located on a regular school site serving school-aged children without disabilities; or LEA may pay for placement in a private preschool and provide supplemental services.

In order for a school district to use state special education funding to place a child with a disability in a private preschool program, the program must be certified by the state as a nonpublic school. Any private preschool applying for certification as a nonpublic school must have at least one full-time staff member with a special education credential. In addition, anyone who provides related services must hold a credential for the service being provided. [Cal. Ed. Code Sec. 56366(1)(1)&(3).] However, current law **does not** prohibit the LEA from paying for private preschool placement out of its general funds if there is no appropriate, least restrictive, and certified preschool program available.

Your child's need for an integrated preschool program or full-inclusion in a regular preschool must be established in his IEP. See Chapter 7, *Information on Least Restrictive Environment*.

10. How many hours a day may my child receive group services?

The IEP team determines the number of hours per day of group services. State law limits group-service time to four hours per day, unless the IEP team determines otherwise. As part of the IEP team, you may request group services in excess of four hours per day if you feel your child requires it. The IEP must be designed to meet the unique needs of the child. This includes group services in excess of four hours per day if the child needs those additional hours in order to receive a free, appropriate public education. [Cal. Ed. Code Sec. 56441.3(b).]

11. I want my disabled child to attend preschool with nondisabled peers. Do school districts ever pay tuition at private preschools

Generally not, because most preschools are not certified as nonpublic schools. It may be necessary to use the fair hearing process to show that a private preschool is the appropriate, least-restrictive educational program for your child. If you prevailed at hearing, the district would have to pay for the noncertified preschool program out of its general fund rather than use special education funds.

12. What if I am told there is a "waiting list" for services for my 3- to 5-year-old?

Under federal and state law, waiting lists are not allowed. The IEP must be implemented as soon as possible following the IEP meeting. While there can be no undue delay in providing special education and related services, the IEP may specify projected dates to begin services. [34 C.F.R. Sec. 300.342 and Sec. 300.347(a)(6); 5 C.C.R. Sec. 3040.]