

# **SPECIAL EDUCATION RIGHTS AND RESPONSIBILITIES**

## **Chapter 12**

### **Information on Early Intervention 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 2004 and will be further clarified by regulations from the U.S. Department of Education in 2006. The California Education Code has been amended to reflect some of the federal law changes but not all. 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.

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**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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**NOTE:** The text in each chapter refers to specific Questions in other chapters by using the titles shown above.

Advancing the rights of Californians with

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## MEMORANDUM

TO: Readers of Special Education Rights and Responsibilities Chapter 12  
FROM: Protection & Advocacy, Inc.  
RE: CORRECTION TO Q&A 24, Chapter 12 re Continuation of IFSP  
Services During Special Education Due Process Proceedings.  
DATE: January 30, 2007

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With the release of new federal special education regulations on October 13, 2006, the U.S. Department of Education has issued a new rule [Title 34 Code of Regulations section 300.518(c)] which conflicts with the *Johnson* and *Pardini* cases mentioned in Q&A 24. The new regulations says that children transitioning from Part C [early intervention] to Part B [preschool special education] at age three, and who file for a due process hearing to resolve a dispute with the school district over their new IEPs, do not have the right to continuation of the services they were receiving under their IFSPs while the hearing process is going on. Only the services about which there is no dispute will be provided during that time.

The Office of Administrative Hearings, which conducts the special education hearings between parents and school districts, has ruled that the new regulation overrules the *Johnson* and *Pardini* cases. See, e.g., *Student v. Los Altos School District*, OAH Case No. N2006060394.

Parents, therefore, should know that services their children may have been receiving under their IFSPs will not necessarily continue after the children turn three unless the school district agrees to continue to provide them under an IEP, even if the parent files for a special education due process hearing. Such services would only start again, and, perhaps, be retroactively awarded back to the third birthday, if, as a result of the hearing, the hearing officer finds that the services are necessary to the child's free and appropriate preschool special education.

**CORRECTION TO Q&A 24, Chapter 12, re Continuation of  
IFSP Services During Special Education Due Process Proceedings.**

# SPECIAL EDUCATION RIGHTS AND RESPONSIBILITIES

## Chapter 12

### Information on Early Intervention Services

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# **SPECIAL EDUCATION RIGHTS AND RESPONSIBILITIES**

## **Chapter 12**

### **Information on Early Intervention Services**

#### **1. What is Part C of the Individuals with Disabilities Education Act (IDEA)?**

The former Education of All Handicapped Children Act (EHA) was amended by PL 99-457 to establish important rights and essential services for young children with disabilities ages birth through 5 years and their families. The name of the Act was later changed to Individuals with Disabilities Education Act (IDEA). P.L. 99-457 added Part C, formerly known as Part H, to IDEA to govern the early intervention program for infants and toddlers, aged birth through 2 years. Part C went into effect in California October 1993. Statutes and regulations to implement the law are now in effect at both the federal and state levels. [20 United States Code (U.S.C.) Secs. 1431 – 1445; 34 Code of Federal Regulations (C.F.R.) Sec. 303.1 – 303.670; California Education (Cal. Ed.) Code Sec. 59425 – 56432; California Government (Cal. Gov.) Code Sec. 95000 – 95030; 17 California Code of Regulations (C.C.R.) Sec. 52000 – 52175.]

#### **2. What is the purpose of Part C of IDEA?**

The purpose of Part C as defined by Congress is:

- (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 infants and toddlers with disabilities reach school age;
- (3) To minimize the likelihood of institutionalization of individuals with disabilities and maximize the potential for their independent living in our society;
- (4) To enhance the capacity of families to meet the special needs of infants and toddlers; and

- (5) To enhance the capacity of State and local agencies and service providers to identify, evaluate, and meet the needs of historically underrepresented populations, particularly minority, low-income, inner-city, and rural populations.

[20 U.S.C. Sec. 1431(a).]

In order to accomplish this purpose, the federal government provides financial assistance to the states: “to develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency program of early intervention services for infants and toddlers with disabilities and their families.” [20 U.S.C. Sec. 1431(b)(1).]

### **3. What is the California legislation affecting infants and toddlers?**

Cal. Gov. Code Secs. 95000 – 95030 and regulations in Title 17 C.C.R. govern early **intervention** services for all eligible children aged 0 – 3 in California. The California Early Intervention Services Act is designed “to provide a statewide system of coordinated, comprehensive, family-centered, multidisciplinary, interagency programs, responsible for providing appropriate early intervention services and support to still eligible infants and toddlers and their families.” [Cal. Gov. Code Sec. 95002.] This bill became effective on September 30, 1993.

In addition, children with solely low incidence disabilities (see Question 7) and children served under an education agency’s responsibility to carry on programs it was operating before Part C took effect in California are also subject to Cal. Ed. Code Secs. 56425 – 56432.

### **4. What is the definition of an infant or toddler with disabilities under Part C?**

The term “infants and toddlers with disabilities” means individuals younger than 3 years old who need early intervention services because they are experiencing developmental delays in the areas of cognitive development, physical development, language and speech development, social or emotional development, or self-help skills. In addition, those infants and toddlers who have a diagnosed mental or physical condition that typically results in a delay, or who are at risk of substantial delay, are included in the definition (at the state’s discretion). The criteria for these definitions are to be determined by each state. [20 U.S.C. Sec. 1432(5).]

## **5. What are the eligibility criteria for early intervention services in California?**

An eligible infant or toddler means an infant or toddler younger than 3 years old, who has a need for early intervention services, as specified in IDEA, that is documented through assessment and evaluation and who meets one of the following criteria:

Infants and toddlers with a developmental delay in one or more of the following five areas: cognitive development; physical and motor development, including vision and hearing; communication development; social or emotional development; or adaptive development. Developmentally delayed infants and toddlers are those who are determined to have a significant difference between the expected level of development for their age and their current level of functioning. This determination shall be made by qualified personnel who are recognized by, or part of, a multidisciplinary team, including the parents.

Infants and toddlers with established risk conditions, who are infants and toddlers with conditions of known etiology or conditions with established harmful developmental consequences. The conditions shall be diagnosed by qualified personnel recognized by, or part of, a multidisciplinary team, including the parents. The condition shall be certified as having a high probability of leading to developmental delay if the delay is not evident at the time of diagnosis.

Infants and toddlers who are at high risk of having substantial developmental disability due to a combination of biomedical risk factors, the presence of which is diagnosed by qualified clinicians recognized by, or part of, a multidisciplinary team, including the parents.

[Cal. Gov. Code Sec. 95014(a)(1) – (3).]

## **6. My infant or toddler may be eligible for both school district and regional center services. Which agency is responsible for ensuring that early intervention services are provided?**

The regional center is the “payer of last resort” and, therefore, is ultimately responsible for providing and/or paying for services to infants and toddlers who

may be eligible for services from both the regional center and school district. [Cal. Gov. Code Sec. 95014(c).]

School districts are obligated to serve only children with low incidence disabilities. See Question 3. They are required to continue to operate programs for infants and toddlers that were in operation during the 1980 – 81 fiscal year. And, they must serve at least the number of infants and toddlers served in 1980 – 81. [Cal. Ed. Code Sec. 56425; Cal. Gov. Code Sec. 95014(c).] This situation is sometimes referred to as the school district’s “maintenance of effort” or “funded program capacity” or “nonsupplanting” requirement.

## **7. If my infant or toddler needs services, who will provide them?**

As of September 30, 1993, all school districts and regional centers in California are responsible for providing early intervention and education services to eligible infants and toddlers younger than 3. While the program will be jointly administered by the Secretary of the Health and Welfare Agency and the Superintendent of Public Instruction, the State Department of Developmental Services (DDS) has been designated as lead agency responsible for the administration and coordination of the statewide service delivery system. [Cal. Gov. Code 95006 and 95007.]

Your local school district or Special Education Local Planning Area (SELPA), or county office is responsible for administering services and providing educational programs for infants who meet the following criteria:

- (1) Have solely low incidence disabilities, defined as conditions which are solely visual, hearing, or severe orthopedic impairments, or any combination thereof;
- (2) Are eligible for special education; and
- (3) Are not eligible for services from the regional center.

Your local regional center is responsible for the provision of early intervention services to **all other eligible infants**, including children who have developmental delays or are at risk of delay. [Cal. Ed. Code Secs. 56026, 56026.5 and Cal. Gov. Code Sec. 95007, 95008.] A regional center is ultimately responsible and the payer of last resort for the provision of services to all other eligible infants and toddlers, including those with solely low incidence disabilities. Yet, a non-solely low incidence disability child may still be served by a local education agency under its “maintenance of effort” obligation. See Question 6 above. This continues to be an area of confusion and frustration for families, especially those families whose

children are “dually served,” that is, receiving a portion of their early intervention services from a school district under its maintenance of effort obligation and the rest of the services from a regional center. Families are advised to have service responsibilities clearly specified in each child’s IFSP (Individualized Family Service Plan).

## **8. How is a referral for early intervention services made and who can make the referral?**

A referral for early intervention services must be made to the regional center or school district. The referral may be made orally or in writing by the parent, a doctor, or any other service provider. A brief letter or phone call describing the child’s needs and making your request for early intervention services is sufficient to initiate the assessment process.

Federal regulations define primary referral sources as hospitals, including prenatal and postnatal care facilities; physicians; parents; daycare programs; local education agencies; public health facilities, other social service agencies; and other health care providers.

Federal regulations also require that referrals be made “no more than two working days after a child has been identified.” Implementation of this provision will be extremely difficult to enforce. [34 C.F.R. Sec. 303.321(d).]

## **9. How will eligibility for early intervention service be determined?**

Each child referred for determination of eligibility for early intervention services must be provided with a “timely, comprehensive, multidisciplinary evaluation” of needs and level of functioning.

In the process of determining eligibility...an assessment shall be conducted by qualified personnel, and shall include a family interview, to identify the child’s unique strengths and needs and the services appropriate to meet those needs; and the resources, priorities, and concerns of the family and the supports and services necessary to enhance the family’s capacity to meet the developmental needs of their infant or toddler.

As appropriate, evaluations and assessments shall be shared and utilized between the regional center, the education agency, and any other agencies providing services for the eligible infant or toddler. Family assessments should be family

directed and voluntary on the part of the family and families shall be given the opportunity to participate in all decisions regarding eligibility and services. [Cal. Gov. Code Sec. 95016(a).]

Regional Centers and school districts are responsible for ensuring implementation of this evaluation process. [Cal. Gov. Code Sec. 95016(b).]

### **10. Once a referral has been made, when will a meeting be held to determine eligibility and develop IFSP?**

The regional center or school district must complete the evaluation and assessment activities, hold a meeting to determine eligibility, and develop an IFSP within 45 calendar days of receipt of the written or oral referral for early intervention services. [Cal. Gov. Code Sec. 95020(b).] With the parent's consent, services may begin prior to completion of the assessment. [20 U.S.C. Sec. 1436(c).]

### **11. How is the IFSP developed and how often is it reviewed?**

A multidisciplinary team, including the parent or guardian, develops the IFSP from a multi-disciplinary assessment of the unique needs of the infant or toddler. The IFSP also identifies the services appropriate to meet such needs. [34 C.F.R. Sec. 303.342 – 303.343.] The IFSP is evaluated at least once a year. [34 C.F.R. Sec. 303.342(c); Cal. Gov. Code Sec. 95020(f).] In addition, the family is provided a review of the plan at six-month intervals or more often when needed. [34 C.F.R. Sec. 303.342(b); 17 C.C.R. Sec. 52102(b).]

### **12. What must be included in the IFSP?**

The IFSP shall be in writing and shall include the following:

- (1) A statement of the infant or toddler's present levels of development;
- (2) A statement of the family's concerns, priorities and resources;
- (3) A statement of the major outcomes to be expected, and the criteria, procedures and time lines used to evaluate these outcomes;
- (4) A statement of specific services including how often, how much, and the method of delivery;
- (5) A statement of the natural environments in which early intervention services shall appropriately be provided, including a justification of the extent, if any, to which the services will not be provided in a natural environment;
- (6) Dates for initiation of services;

- (7) Name of agency responsible for providing identified services;
- (8) Name of the service coordinator from a profession most relevant to the infant or toddler's need;
- (9) A transition plan to other appropriate services; and
- (10) Parents must sign the IFSP to give consent for services.

[20 U.S.C. Sec. 1436(d) and (e); 34 C.F.R. Sec. 303.344; Cal. Gov. Code Sec. 95020(d); 17 C.C.R. Sec. 52106.]

### **13. What are the transition requirements of Part C?**

For children eligible for services under Part B, states must assure a smooth and effective transition. An IEP must be developed and implemented by the child's third birthday. There must be no gap in services as a child moves from Part C to Part B, even if this means that the child must continue in her early intervention program for a period of time past her third birthday. [34 C.F.R. Sec. 303.148.]

For children who are not eligible for Part B, a transition plan must nevertheless be developed. This plan also must assure a smooth transition from Part C to other appropriate services for which the child is eligible. [Cal. Gov. Code Sec. 95020(d).]

### **14. What services are included under Part C for children from birth through 2 years old?**

Services under Part C are provided under public supervision and at no cost to families and must be designed to meet the infant or toddler's developmental needs. [20 U.S.C. Sec. 1432(4).] They may include special education, speech and language pathology and audiology, occupational therapy, physical therapy, psychological services, parent and family training and counseling services, transition services, medical services for diagnostic purposes, and health services necessary to enable the child to benefit from other early intervention services. Case management services must be provided for every eligible child and the child's parents. The federal regulations list and describe the following services:

- (1) Assistive technology devices and services;
- (2) Audiology;
- (3) Family training;
- (4) Counseling and home visits;

- (5) Some health services;
- (6) Medical services only for diagnostic or evaluation purposes;
- (7) Nursing services;
- (8) Nutrition services;
- (9) Occupational and physical therapy;
- (10) Psychological services;
- (11) Social work services;
- (12) Service coordination services;
- (13) Special instruction;
- (14) Speech and language services;
- (15) Transportation and related costs; and
- (16) Vision services.

[20 U.S.C. Sec. 1432(4)(E); 34 C.F.R. Sec. 303.12(d).]

The list of related services is not exhaustive and may include other services as appropriate. [34 C.F.R. Sec. 303.12 (Note).] Early intervention services may also include such services as respite and other family support services. [17 C.C.R. Sec. 52000(b)(12).]

For children served by local education agencies, the California Education Code identifies certain services for infants and toddlers that include, but are not limited to, the following:

- (1) Observing the infant's behavior and development in her natural environment;
- (2) Activities that are developmentally appropriate for the infant and are specially designed, based on the infant's exceptional needs, to enhance the infant's development. Those activities shall be developed to conform with the infant's individualized family service plan and to ensure that they do not conflict with her medical needs;
- (3) Demonstrating developmentally appropriate activities for the infant to the parents, siblings, and other caregivers, as designated by the parent;
- (4) Interacting with the family members and other caregivers, as designated by the parent, to reinforce their development of skills necessary to promote the infant's development;

- (5) Discussing parental concerns related to the infant and the family, and supporting parents in coping with their infant's needs;
- (6) Assisting parents to solve problems, to seek other services in their community, and to coordinate the services provided by various agencies.

[Cal. Ed. Code Sec. 56426.1.]

## **15. What services can my child receive in my home?**

To the maximum extent appropriate to the needs of the child, early intervention services must be provided in natural environments, including the home and community settings in which children without disabilities participate. [34 C.F.R. Sec. 303.12(b).] Natural environments mean settings that are natural or normal for the child's age peers who have no disabilities. [34 C.F.R. Sec. 303.18.] Therefore, any services provided as early intervention services may be provided in the home, assuming the services are not of a type which must be provided in a certain location because of the location of equipment or because they are group-setting services.

## **16. What group services can my child receive?**

Your child may receive the following services:

- (1) All services identified in the section defining home-based services;
- (2) Group and individual activities that are developmentally appropriate and specially designed, based on the infant's exceptional needs, to enhance the infant's development (those activities shall be developed to conform to the infant's individualized family service plan and to ensure that they do not conflict with her medical needs);
- (3) Opportunities for infants to socialize and participate in play and exploration activities;
- (4) Services by therapists, psychologists, and other specialists as appropriate;
- (5) Access to various developmentally appropriate equipment and specialized materials; and
- (6) Opportunities for family involvement activities, including parent education and parent support groups.

[Cal. Ed. Code Sec. 56426.2.]

**17. For children served by a school district, the Education Code seems to limit the frequency of home-based and group services. Is this the case?**

No. For children served to any extent by a school district, California Education Code Section 56426.25 makes clear that the maximum service levels outlined for home-based and group services “apply only for purposes of the allocation of funds for early education programs” by the State of California. School districts may exceed those maximum service levels in accordance with the individual needs and services included in the student’s IFSP. The maximum service levels are not meant to limit student services, but the State’s fiscal responsibility for those student services. [Cal. Ed. Code Sec. 56426.25.]

**18. Who may provide services under Part C?**

Early intervention services are to be provided by qualified personnel including:

- (1) Special educators;
- (2) Speech and language pathologists;
- (3) Audiologists;
- (4) Occupational therapists;
- (5) Physical therapists;
- (6) Psychologists;
- (7) Social workers;
- (8) Nurses;
- (9) Nutritionists;
- (10) Family therapists;
- (11) Orientation and mobility specialists; and,
- (12) Pediatricians and other physicians.

[20.U.S.C. Sec. 1432(4)(F).]

**19. Who is responsible for implementing the IFSP?**

Under Part C, a service coordinator designated by the IFSP team is responsible for **direct** implementation of the plan, as well as for coordination with other agencies or persons providing services. [20 U.S.C. Sec. 1436(d)(7).] California law requires that each eligible infant or toddler and family be provided a service coordinator

who will be responsible for facilitating the implementation of the IFSP and for coordinating with other agencies and persons providing services to the family. DDS shall ensure that service coordinators meet federal and state regulation requirements, are trained to work with infants and their families, and meet competency requirements. [Cal. Gov. Code 95018.]

Under California education law, a school district, SELPA, or county office shall be responsible for the provision of services through a trans-disciplinary team. The team may consist of professionals from various disciplines, including persons from special education, speech and language, nursing, social work or mental health, **as well as parents**. A person on the multidisciplinary team is designated to coordinate and provide services and act as a consultant to other team members. [Cal. Ed. Code Secs. 56426.6(a), (b), and (c).]

## **20. What is the Service Coordinator supposed to do for my child and our family?**

The duties of the Service Coordinator are active and ongoing and include the following:

- (1) Coordinate all services across agency lines;
- (2) Serve as the single point of contact in helping parents to obtain the services and assistance they need;
- (3) Assist parents in gaining access to the early intervention services and other services identified in the IFSP;
- (4) Coordinate the provision of early intervention services and other services that the child needs or is being provided;
- (5) Facilitate the timely delivery of available services;
- (6) Continuously seek the appropriate services and situations necessary to benefit the development of each child being served for the duration of the child's eligibility;
- (7) Coordinate the performance of evaluations and assessments;
- (8) Facilitate and participate in the development, review, and evaluation of the individualized family service plan;
- (9) Assist families in identifying available service providers;
- (10) Coordinate and monitor the delivery of available services;

- (11) Inform families of the availability of advocacy services and procedural safeguards;
- (12) Coordinate with medical and health providers and facilitate the exchange of information between service providers such as health providers, medical case managers, regional centers, and local education agencies; and
- (13) Facilitate the development of a transition plan to preschool services, if appropriate.

[34 C.F.R. Sec. 303.22; 17 C.C.R. Sec. 52121.]

## **21. What does the transition process involve between early intervention services from a regional center and potential preschool special education services from a school district?**

For children who will continue to be eligible for IDEA services in the form of special education preschool services after they reach age 3, California law ensures that a special education IEP is developed and is being implemented by the child's third birthday. [17 C.C.R. Sec. 52112(a).] However, this intent has not been well honored in California and gaps in services and delays in development and implementation of an IEP for eligible children often occur. Therefore, it is important for parents to know and keep track of the steps leading up to this transition so that the necessary steps are taken in a timely fashion.

Six months before the child turns 3, the service coordinator must:

- (1) Notify the parent of a child who may be eligible for special education preschool services that transition planning will occur within the next 3 to 6 months;
- (2) Notify the local school district that there will be an IFSP meeting before the child turns 2 years, 9 months old to specify the transition steps necessary for movement to special education preschool; and
- (3) Within 30 days of the notification under number 2 above, coordinate a date with the family and the school district for the IFSP meeting.

At the transition IFSP meeting, held no later than when the child reaches age 2 years, 9 months, the steps necessary to transition shall be recorded and a date set for an IFSP/IEP meeting before the child's third birthday. The steps must include transmission, with the parent's consent, of information about the child to the school district and identification of any necessary assessments by the school district and regional center to determine eligibility and the timelines for completing those assessments. The meeting must also include determination of the steps

necessary to refer the child to the school district in enough time to ensure that the necessary special education assessments are completed so that an IEP can be developed and begin to be implemented by the child's third birthday. The child's referral to the school district must occur no later than the child reaching age 2 years, 9 months or before the school district's break in services if the child will turn 3 during a school break in services. If the child was only first identified for early intervention services at the age of 2 years, 6 months, or later, then the initial IFSP meeting shall also include the transition activities described above. [17 C.C.R. Sec. 52112(b).]

**22. I am having problems with the school district that will be serving my child after he turns age 3. The school district is not participating in the transition process from early intervention services to preschool special education services. What is the school's responsibility in this process?**

The school district that will be serving an early intervention child as a preschooler after the child turns three has specific responsibilities. It must ensure that the child experiences a smooth and effective transition to preschool programs. [Cal. Ed. Code Sec. 56426.9(a); 20 U.S.C. Sec. 1437(a)(8).] It must ensure that an IEP has been developed and is being implemented by the child's third birthday. [Cal. Ed. Code Sec. 56426.9(b); 34 C.F.R. Sec. 300.121(c).] If a child turns three during the summer months, the IEP team must determine the date when IEP services will begin. [Cal. Ed. Code Sec. 56426.9(d); 34 C.F.R. Sec. 300.121(c)(2).] The school district must participate in transition planning conferences arranged by the regional center. [Cal. Ed. Code Sec. 56426.9(c); 20 U.S.C. Sec. 1437(a)(8).]

**23. Is there anything I can do to register a complaint about a failure of an agency to follow the procedures described in this chapter or to provide the services specified in my child's IFSP?**

You can file a written complaint with:

California Department of Developmental Service  
Attn: Chief, Early Start Program Development Section  
1600 Ninth Street  
Sacramento, CA 95814

If you have trouble putting a complaint in writing, your child's service coordinator must assist you. [17 C.C.R. Sec. 52170.] The complaint must include the name, address and telephone number of the person filing the complaint, as well as a

statement describing what the regional center, school district, or private provider of early intervention services has done to violate the law regarding provision of early intervention services. The statement must include the facts on which the complaint is based, the name of the person or entity responsible for the failure, and a description of any steps that have already been taken to resolve the complaint locally. [17 C.C.R. Sec. 52170.] No other complaint process, other than this one, may be used to address a problem with early intervention services; the complaint must be filed with DDS even if it involves a local school district. [17 C.C.R. Sec. 52170(c).]

Within 60 days of getting the complaint, DDS must:

- (1) Investigate;
- (2) Give you an opportunity to submit additional information;
- (3) Review all relevant information;
- (4) Determine whether there has been a violation of any law affecting the infant or toddler; and
- (5) Issue a written decision which includes findings, conclusions, reasons, any required corrective action, timelines for any corrective action, and an offer of technical assistance to the agency or individual found at fault.

[17 C.C.R. Sec. 52171.]

## **24. What are my due process rights?**

Due process is a legal concept that ensures that a person will be notified and given an opportunity to be heard before a public entity denies, reduces or terminates something the person might be entitled to.

Regarding notification, parents must be given written notice a reasonable time before a regional center or school district proposes or refuses to initiate or change the identification, assessment data, placement or services of an infant or toddler. By “initiate,” the law means that even those children who were never identified as eligible or never given a particular placement or service, are entitled to written notice of the agency’s refusal. The written notice must give enough details to inform the parent about what the agency is proposing or refusing, the reasons for it, and all of the rights and procedures the parent has to challenge the proposal or refusal. [17 C.C.R. Sec. 52161.]

Regarding the right to be heard, parents must be given an opportunity to present their information and arguments against whatever it is the service agency is

proposing or refusing to do. This opportunity is called a “fair hearing” or “due process hearing.” It is NOT used to complain about an agency’s failure to abide by laws or procedures or to carry out the service identified in the IFSP. For that, see Question 23 on complaints. Rather, the fair hearing is to resolve disputes about a child’s eligibility for the program or about what services should go into your child’s IFSP. At the hearing, a state hearing officer will hear the testimony from both sides and will consider what the evaluation and assessment reports and other records say about the child and/or what he may need in the way of placement or services. The hearing officer will issue a written decision after the hearing. [17 C.C.R Sec, 52174.]

Prior to the hearing, the parties may, if they wish, first enter into a mediation conference with a state mediator to try to resolve the dispute without a hearing. The mediation conference is not mandatory, but the authors of this manual encourage parties to use it to resolve at least some, if not all, of the disputed issues without the expense and effort of an evidentiary hearing.

The entire process of exercising one’s due process rights, including both mediation and a fair hearing and receipt of a written decision, is supposed to take no more than 30 days. [17 C.C.R. Sec. 52172(d).] The dispute may involve a child who is already receiving services under an IFSP, and the agency wants to reduce or terminate some or all services. Under those circumstances, the child must continue to receive the level of service he was previously receiving from the agency while due process procedures are being followed to challenge the proposed reduction or termination. [17 C.C.R. Sec. 52172(f).]

To initiate a mediation conference or hearing, an individual must mail a written request to:

Office of Administrative Hearings  
Special Education Unit  
2349 Gateway Oaks Drive, Suite 200  
Sacramento, CA 95833-4231  
Attn: Early Intervention Section

You also have the right to continuation of the services the child was receiving as an Early Start child while the hearing process with the school district is pending. The school district is responsible for continuing these services, however the school district is not responsible for continuing these services through the same providers the child had under his IFSP prior to turning age 3. [Johnson v. Special Education Hearing Office, 287 F.3d 1176 (9th Cir. 2002); Pardini v. Allegheny Intermediate Unit, 420 F.3d 181 (3rd Cir. 2005).]

**25. What happens at a fair hearing and what are my rights in the process?**

The fair hearing is conducted by an impartial state hearing officer who has no personal or professional interest which would conflict with her objectivity and who is knowledgeable about the relevant laws. She must listen to the different witnesses who testify for both sides and examine the other evidence presented. She must issue a written decision, which includes findings of fact within 30 days of the time the parent, or service agency, requested a fair hearing. [17 C.C.R. Sec. 52174(d).]

For a summary of parents' rights and responsibilities prepared jointly by the State Departments of Developmental Services and Education, see Appendix I.

**26. Our service coordinator and I agreed that my child needs certain services in her IFSP, but the service coordinator said that there were no approved providers with openings right now and that we would have to wait. Is that true?**

No. The service coordinator may be unaware of a change to the law which took effect in 2001. Regional centers used to believe that they were limited to using service providers that were approved by the State Department of Developmental Services and that if no such service provider was available, a child would have to wait for services. This was a serious problem because the rates of pay which the Department and regional centers paid these providers were not always high enough to attract enough providers to meet the demand. As part of litigation brought by PAI and through PAI's negotiations with the Legislature, the law was amended to state that regional centers must use only these approved providers except where there would be delays in services to children or costs to their families for services needed under the IFSP. Where there would be delays or costs, the regional center must now apply to the Department for a special service code which will allow the regional center to immediately purchase the service from any provider. [Cal. Gov. Code Sec. 95004(b).]

# **Appendix I - Parents Rights and Responsibilities in the Early Start Program**

Prepared Jointly By The  
Department of Developmental Services (DDS)  
California Department of Education (CDE)

## **Evaluation and Initial Assessment**

Developing an individualized family services plan (IFSP) includes the performance of a timely, comprehensive, multidisciplinary evaluation and assessment of every child under age 3 who is referred for suspected developmental delay. If your child is determined to be eligible, you have the right to appropriate early intervention services. You have the right to provide information throughout the process and are encouraged to make decisions about your child's early intervention services. Procedural safeguards make certain that children and their parents or guardians are provided their rights under the law.

As a parent or guardian, you have the right to:

- (1) Be given the opportunity to begin the evaluation and initial assessment process;
- (2) Within 45 days after the referral of your child to a regional center or a local education agency, the evaluation and assessment activities must be completed and an IFSP meeting must take place to develop the IFSP;
- (3) Review the procedures and tests used in the assessment and evaluation;
- (4) Provide written permission before any evaluations or assessments are administered and refuse any evaluations, assessments, and early intervention services;
- (5) Be fully informed of the results of evaluations and assessments;
- (6) Have access to records, including the right to examine and obtain copies of records relating to your child and the right to request an amendment of records of any participating agency relating to your child;
- (7) Have an advocate assist you in dealings with the early intervention system, including regional center and local education agencies;
- (8) Obtain independent assessments and evaluations;

- (9) Have personally identifiable information maintained in a confidential manner;
- (10) Request a due process hearing to challenge the findings of any evaluations or assessments; and
- (11) Attend a meeting to develop an IFSP within 45 days from referral.

Evaluation means the procedures used by appropriate, qualified personnel to determine your child's initial and continuing eligibility for early intervention services under the Early Start Program. These procedures require that:

- (1) Evaluation and assessment materials are administered in the native language of a child's parent/family or other mode of communication, unless it is clearly not feasible to do so;
- (2) Evaluation and assessment procedures and materials are selected and administered so as not to be discriminatory by race, sex, culture, or disabling condition;
- (3) Evaluation and assessment materials shall be appropriate for the specific purposes for which they are being used;
- (4) Evaluation and assessments are conducted by qualified personnel;
- (5) Evaluations or assessments administered to individuals with known visual, hearing, or communication impairments shall be selected to accurately reflect the individual's aptitude or achievement level whichever factor is the subject of measurement;
- (6) Evaluation and assessment materials shall be designed to assess the specific areas of developmental and/or educational needs and not be designed to provide solely intelligence quotient measurement; and
- (7) Assessments and evaluations are administered in the five developmental areas, including, where appropriate, health and development, vision, hearing, motor abilities, language functions, and social and emotional status.

### **Individualized Family Services Plan (IFSP)**

If your child is determined to be eligible for early intervention, a meeting to develop your IFSP must take place within 45 days of your referral to one of those two agencies. You have the following rights in developing and implementing the IFSP. The right to:

- (1) Attend the meeting and participate in determining eligibility and developing the IFSP;

- (2) Request the attendance of other family members;
- (3) Request the attendance and participation of an advocate at the IFSP meeting;
- (4) Have the contents of the IFSP fully explained in your native language;
- (5) Give specific consent to each service listed on the IFSP. If you do not give consent to a service, it will not be provided. You may withdraw consent after initially receiving a service;
- (6) Provide concurrence to an assessment of your resources, priorities, and concerns regarding enhancing the development of your child;
- (7) Be notified in your native language and in advance, before an agency or service provider proposes or refuses to initiate or change the identification, evaluation, assessment, or educational placement of your child, or the provision of appropriate early intervention services to your child or your family; and
- (8) Consent to the transmission of information about your child to the local education agency during transition to services under Part B of IDEA.

### **Administrative Proceedings**

Parents may file written complaints regarding evaluation, assessment, placement, or service provision issues described above. Any parents involved in an administrative resolution of a complaint have the right to:

- (1) Be accompanied and advised by counsel and by individuals with special training with respect to early intervention services for children under age 3;
- (2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;
- (3) Prohibit the introduction of any evidence at the proceeding that has not been disclosed to you at least five days before the proceeding begins;
- (4) Obtain a written or electronic verbatim transcription of the proceeding;
- (5) Obtain written findings of fact and decisions within 30 days from the date the complaint is filed;
- (6) Have all personally identifiable information maintained in a confidential manner;
- (7) Require that the proceeding is carried out at a time and in a location which is reasonably convenient for you; and

- (8) Bring civil action upon the other party in the complaint following completion of the proceeding.