

# **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 (“Early Intervention”) of the Individuals with Disabilities Education Act (IDEA)?**

Part C (formerly known as Part H) governs the federal “early intervention” program for infants and toddlers, aged birth through two years. The purpose of Part C is:

- (1) To enhance the development of infants and toddlers with disabilities and to minimize their potential for developmental 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 institutionalization of individuals with disabilities and maximize their potential for independent living;
- (4) To enhance the ability of families to meet their infants and toddlers’ special needs; and
- (5) To enhance the capacity of public agencies and service providers to identify, evaluate, and meet the needs of “historically underrepresented populations” (especially minority, low-income, inner-city and rural).

[20 United States Code (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 system that provides early intervention services for infants and toddlers with disabilities and their families.” [20 U.S.C. Sec. 1431(b)(1).]

## **2. Does California have its own legislation affecting infants and toddlers?**

Yes. 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 all eligible infants and toddlers and their families.” [California Government Code (Cal. Gov. Code) Sec. 95002.]

## **3. Which agencies are responsible for ensuring that services are provided to infants or toddlers?**

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. The DDS has been designated as lead agency responsible for the administration and coordination of the statewide service delivery system. [Cal. Gov. Code Secs. 95006 & 95007.]

The California Department of Education is responsible for administering services and providing educational programs for infants who meet the following criteria:

- (1) Have solely “low incidence” disabilities — conditions occurring in less than 1% of the school population which are solely visual, hearing, or severe orthopedic impairments, or any combination of those conditions;
- (2) Require intensive special education and services.

The local regional center is responsible for providing 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; Cal. Gov. Code Sec. 95008; Cal. Welfare & Institutions (Welf. & Inst.) Code Sec. 4435; 5 California Code of Regulations (C.C.R.) Sec. 3031.]

Families should have service responsibilities clearly specified in their child’s Individualized Family Service Plan (IFSP). For infants and toddlers who are eligible to receive services from both a regional center and a local school district, the regional center is responsible for providing or purchasing appropriate Early Start services that are beyond the responsibilities of the district—but only to the extent these services are required by the federal early intervention law. [Cal. Gov. Code Sec. 95014(c).]

**4. 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, 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. Districts are required to operate their programs for infants and toddlers at the same level they did during the 1980 – 81 fiscal year. [Cal. Ed. Code Sec. 56425; Cal. Gov. Code Sec. 95014(c).] This requirement is sometimes referred to as the district’s “maintenance of effort.”

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

The term “infants and toddlers with disabilities” means children younger than three 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, the term also includes infants and toddlers who have a diagnosed mental or physical condition that typically results in a developmental delay. The state may also decide the term includes children younger than three who are at risk of having substantial developmental delays.” The criteria for these definitions are to be determined by each state. [34 C.F.R. Sec. 303.21.]

## **6. What are the eligibility criteria for early intervention services (“Early Start”) in California?**

In California, a child younger than three years old is eligible for what the state calls “Early Start” services if, after assessment, he meets one of the following criteria:

- (1) 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.
- (2) Developmentally delayed children 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. “Significant difference” means a 33% delay in one developmental area before two years of age. For a child 2-3 years of age, a delay of 50% in one developmental area or a 33% delay in two or more areas is required. The age for making this eligibility determination is the age of the infant or toddler on the date of his initial referral to the program.
- (3) Infants and toddlers with **established risk conditions** are children under 3 with conditions of “known etiology” (cause) 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.

[Cal. Gov. Code Sec. 95014(a).]

## **7. How will California continue to serve at-risk infants and toddlers?**

The **high risk** eligibility category no longer exists due to the 2009 budget crisis. Instead, the California Legislature has created a prevention program for at-risk babies. This program serves children under three years of age who are not eligible for the early intervention program under either of the two categories above, or as regular regional center clients with a developmental disability — but whose “genetic, medical, developmental, or environmental history is predictive of a substantially greater risk for developmental disability than that for the general population. The presence of such a history must be diagnosed by qualified clinicians.” [Cal. Welf. & Inst. Code Sec. 4435.]

The California Department of Developmental Services (DDS) has created and funded a program administered locally by the various regional centers throughout the state. However, each regional center’s program will be only as large as the amount of money from the state for the at-risk babies program. Regional centers will not supplement the program with any additional money from their own budgets.

The program will provide intake, assessment, and case management services. It will also provide referral services to generic agencies for actual services. Generic agencies are those agencies that already have a legal responsibility to serve the general public and are receiving public money to do so. Examples would include Medi-Cal and California Children’s Services. The program also includes an appeal process which parents can use to challenge denials of eligibility for the services of the prevention program for at-risk babies.

Parents and advocates should continue to monitor developments as the state establishes policies and rules for this program to learn what, if any, other services may be provided. If, while an infant is participating in the prevention program for at-risk babies, it is determined that he qualifies for the Early Start program, or that he has a developmental disability, the regional center will serve the child under either of those programs. [Welf. & Inst. Code Sec. 4435.]

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

A referral must be made to the regional center or school district, *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 the request for early intervention services is enough to start the assessment process.

Primary referral sources are hospitals (including prenatal and postnatal care facilities), doctors, parents, childcare programs, school districts, public health facilities, agencies and staff in the child welfare system, homeless family shelters, domestic violence shelters other social service agencies and other health care providers. Referrals shall be made "as soon as possible but in no case more than seven days, after a child has been identified." [34 C.F.R. Sec. 303.303(a) & (c); 17 C.C.R. Sec. 52040.]

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

Regional Centers and school districts are responsible for ensuring implementation of the evaluation process. [Cal. Gov. Code Sec. 95016(b).] 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. The 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, assessments shall be shared between the regional center, the school district, and any other agencies providing services for the eligible infant or toddler. 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. [34 C.F.R. Sec. 303.321; Cal. Gov. Code Sec. 95016(a).]

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The eligibility decision is made by qualified staff of the regional center or district with the participation of the multidisciplinary team including the parent. The evaluation must be based on “informed clinical opinion” and include:

- (1) A review of pertinent records related to the infant or toddler's health status and medical history provided by qualified health professionals who have evaluated or assessed the infant or toddler; and
- (2) Information obtained from parental observation and report.

The evaluation must also include the infant or toddler's level of functioning in the areas of:

- (1) Cognitive development;
- (2) Physical and motor development, including vision and hearing;
- (3) Communication development;
- (4) Social or emotional development; and,
- (5) Adaptive development.

No single procedure or test can be used as the sole criterion for determining eligibility. Standardized tests may be used as part of the evaluation and shall be:

- (1) Selected to ensure that, when administered to an infant or toddler with impaired sensory, motor or speaking skills, the tests produce results that accurately reflect the infant's or toddler's aptitude, developmental level, or any other factors the test purports to measure and not the infant's or toddler's impaired sensory, motor or speaking skills unless those skills are the factors the test purports to measure;
- (2) Validated for the specific purpose for which they are used;
- (3) Selected and administered so as not to be racially or culturally discriminatory; and,
- (4) Conducted in a “natural environment” whenever possible.

Natural environment means a setting that is natural or normal for non-disabled peers that are the child’s age. [34 C.F.R. Sec. 303.26.]

Infants or toddlers with solely low incidence disabilities shall be evaluated and assessed by qualified district staff whose professional preparation, license or credential authorization are specific to the suspected disability.

[17 C.C. R. Sec. 52082.]

## **10. Once found eligible, how will services for my child and our family be identified?**

The regional center or district must do an assessment to plan for the services to be provided to your child and family. The “assessment for service planning” must identify all of the following:

- (1) Your child's unique strengths and needs in each of the five areas of assessment;
- (2) Early intervention and other services appropriate to meet your child’s needs; and.
- (3) Your family’s resources, priorities and concerns and the supports and services necessary to enhance your family's capacity to meet the developmental needs of an infant or toddler with a disability (if you consent to a family assessment).

Regional centers and districts may use existing evaluation materials if the multidisciplinary team agrees that these materials adequately describe the levels of development and service needs for an infant or toddler. Assessments for service planning shall be conducted in natural environments whenever possible.

Assessment shall be based on age- appropriate methods and procedures which may include any of the following:

- (1) A review of information related to your child’s health status and medical history provided by qualified health professionals who have evaluated or assessed your child;
- (2) Developmental observations by you and qualified personnel;

- (3) Other procedures used by qualified personnel to determine the presence of a developmental delay, established risk condition, or high risk for a developmental disability; and,
- (4) Standardized tests or instruments.

Assessments of family resources, priorities and concerns related to enhancing the development of your child shall be voluntary and shall:

- (1) Be conducted by qualified personnel trained to utilize appropriate methods and procedures;
- (2) Be based on information provided by your family through a personal interview;
- (3) Incorporate your description of your family's resources, priorities and concerns related to enhancing your child's development; and
- (4) Be conducted in the language of your family or other mode of communication, unless this is not feasible.

[17 C.C.R. Sec. 52084.]

**11. Once a referral for assessment has been made, when will a meeting be held to determine eligibility and to develop a service plan?**

The regional center or school district must complete the assessment activities, hold a meeting to determine eligibility, and develop an Individualized Family Service Plan (IFSP) within 45 calendar days of the date it receives the written or oral referral for early intervention services. [34 C.F.R. Sec. 303.310; Cal. Gov. Code Sec. 95020(b).] With the parent's consent, services may begin before completion of the assessment. [20 U.S.C. Sec. 1436(c).]

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

A multidisciplinary team, including the parent or guardian, develops the IFSP from an 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. Secs. 303.343 & 303.344.] 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, a review of the plan is provided to the family every 6 months, or more often when needed. [34 C.F.R. Sec. 303.342(b); 17 C.C.R. Sec. 52102(b).]

### **13. 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 starting services;
- (7) Name of agency responsible for providing the identified services;
- (8) Name of the service coordinator; and,
- (9) A transition plan to other appropriate services.

[20 U.S.C. Sec. 1436(d); 34 C.F.R. Sec. 303.344; Cal. Gov. Code Sec. 95020(d); 17 C.C.R. Sec. 52106(b).] Parents must sign the IFSP to give consent for services to begin. [20 U.S.C. Sec. 1436 (e).]

**14. What services are included under Part C for children from birth up until age three?**

Services under Part C are provided by the regional center or a school district to families under public supervision, and almost always at no cost, and must be designed to meet the infant or toddler's developmental needs. [20 U.S.C. Sec. 1432(4).] These may include:

- (1) Assistive technology devices and services;
- (2) Audiology;
- (3) Family training, counseling and home visits;
- (4) Health services (includes catheterization, tracheostomy care, tube feeding, changing of dressings and colostomy bags and physician consultation);
- (5) Medical services only for diagnostic or evaluation purposes;
- (6) Nursing services;
- (7) Nutrition services;
- (8) Occupational and physical therapy;
- (9) Physical therapy;
- (10) Psychological services;
- (11) Service coordination services;
- (12) Sign language and cued language services;
- (13) Social work services;
- (14) Special instruction;
- (15) Speech and language services;
- (16) Transportation and related costs;
- (17) Vision services; and
- (18) Respite and other family support services.

[20 U.S.C. Sec. 1432(4)(E); 34 C.F.R. Sec. 303.13 & 303.16; 17 C.C.R. Sec. 52000(b)(12).]

Due to the 2009 budget crisis, except for durable medical equipment, regional centers will no longer purchase services not required under federal law, such as: child care, diapers, dentistry, medical care, housing, interpreters, translators, genetic counseling, substance abuse counseling, music therapy, and respite services not related to the developmental delay. [Cal. Gov. Code Sec. 95020(e)(3).]

## **15. Can services be provided to my child in my home?**

Under state law, infants and toddlers are entitled to home-based services that include, but are not limited to:

- (1) Observing the infant's behavior and development in his natural environment;
- (2) Activities that are developmentally appropriate for the infant and are specially designed, based on the infant's exceptional needs, to enhance his 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 his 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.]

To the maximum extent appropriate to the needs of your 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. 303.13(a)(8).] Therefore, any early intervention services may be provided in the home as appropriate. Your child's IFSP must include a statement of the services he needs to meet his unique needs and of ways of providing services in natural environments.

Before the 2009 budget crisis, some or all of the behavior intervention training was home-based and individualized. Now, when the IFSP is developed, reviewed, or modified, the team must consider the use of group training for parents on behavior intervention in place of in-home individual parent training. [Cal. Gov. Code Sec. 95020(d)(5).]

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

Your child may receive the following services:

- (1) All home-based services;
- (2) Group and individual activities that are developmentally appropriate and specially designed, based on your infant's exceptional needs, to enhance his 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 his 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.]

Due to the 2009 budget crisis, the IFSP team must consider purchasing neighborhood preschool services in place of infant development programs. [Cal. Gov. Code Sec. 95020(d)(5).]

**17. If my child is served by a school district instead of a regional center, is there a limit to the frequency of home-based and/or group services?**

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

**18. Who may provide early intervention services to infants and toddlers?**

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

- (1) Special educators, including teachers of children with hearing impairments, deafness, visual impairments and blindness;
- (2) Speech and language pathologists;
- (3) Audiologists;
- (4) Occupational therapists;
- (5) Physical therapists;
- (6) Psychologists;
- (7) Social workers;
- (8) Nurses;
- (9) Registered dietitians;

- (10) Family therapists;
- (11) Orientation and mobility specialists;
- (12) Pediatricians and other physicians; and
- (13) Vision specialists, including ophthalmologists and optometrists.

[20.U.S.C. Sec. 1432(4)(F); 34 C.F.R. Sec. 303.13(c).]

**19. I have been told there are no service providers available. Can my child be placed on a waiting list for services?**

No. Neither the regional centers nor the school district can place a child with an IFSP on a waiting list for early intervention services. [Cal. Ed. Code Sec. 52106(c).] Regional centers are required to contract only with an “approved provider.” However, if this requirement would delay services to your child, the regional center can request an exception from DDS to immediately purchase services from another provider. [Cal. Gov. Code Sec. 95004(b).]

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

A service coordinator designated by the IFSP team is responsible for direct implementation of the plan, as well as coordination with other agencies or service providers. DDS shall ensure that service coordinators are trained to work with infants and their families and meet federal and state regulatory and competency requirements. [20 U.S.C. Sec. 1436(d)(7); Cal. Gov. Code 95018.]

Under California 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 special education, speech and language, nursing, social work or mental health, as well as parents. A person on the team is designated to coordinate and provide services and act as a consultant to other team members. A service provider shall also have appropriate experience in “normal and atypical infant development.” [Cal. Ed. Code Sec. 56426.6.]

**21. 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) Provide initial notice of Early Start rights and services;
- (2) Obtain consent for services, evaluations and assessments;
- (3) Coordinate all services across agencies, including information exchange;
- (4) Serve as the single point of contact in helping parents to obtain the services and assistance they need;
- (5) Assist parents in gaining access to the early intervention services and other services identified in the IFSP;
- (6) Coordinate the provision of early intervention services and other services that the child needs or is being provided;
- (7) Facilitate the timely delivery of available services;
- (8) 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;
- (9) Coordinate the performance of evaluations and assessments;
- (10) Facilitate and participate in the development, review, and evaluation of the individualized family service plan;
- (11) Assist families in identifying available service providers;
- (12) Coordinate and monitor the delivery of available services;
- (13) Inform families of the availability of advocacy services and procedural safeguards; and
- (14) Facilitate the development of a transition plan to preschool services, if appropriate.

[34 C.F.R. Sec. 303.34; 17 C.C.R. Sec. 52121.]

**22. Can the regional center ask me to pay for any portion early intervention services?**

There are three early intervention services subject to what is known as the Family Cost Participation Program: respite, day care and camping. This program only applies to families whose annual income is at least 400% of the federal poverty level. [Cal. Welf. & Inst. Code Sec. 4783.] In 2009, for example, 400% of the federal poverty level for a family of four was \$88,200. Families with an income at this level or higher pay a percentage of the cost of their child's respite, day care, or camping services. The percentage begins at 10%, but may be reduced by other factors such as the number of children living at home or in out-of-home placement.

**23. Can the regional center ask me to use my private health insurance or health care services plan to pay for medical services that are part of my child's IFSP?**

Federal law does not prohibit states from using private insurance for early start services. [34 C.F.R. Secs. 303.12(a)(3)(iv) & 303.520(d)(1).] Since the 2009 California budget crisis, regional centers have required parents to use private insurance to pay for medical services written into the IFSP, as long as this is in compliance with state and federal law. This may include paying deductibles and co-payments, but not paying for an evaluation or assessment of the infant or toddler. However, your inability to obtain a decision from your private insurer about approval or denial of a claim must not result in denial of service to your child or delay the delivery of service. [Cal. Gov. Code Sec. 95004(b)(1).]

**24. What are the early intervention transition requirements for children who reach the age of three?**

For children who have participated in Part C programs and who are eligible for preschool services, the state must assure a smooth and effective transition. An IEP must be developed and implemented by the child's third birthday. The lead agency must notify the child's local school district that a child currently served under an

IFSP will shortly reach the age of eligibility for preschool special education services. [34 C.F.R. Sec. 303.209(b)(1)(i); 34 C.F.R. Secs. 300.101(b) & 300.124(a) & (b); Cal. Ed. Code Sec. 56426.9(a) & (b).]

For children who *may* be eligible for these preschool services, the lead agency must convene a conference with the parents and the school district at least 90 days (or up to 6 months) prior to the child's 3rd birthday, to discuss potential preschool special education services. [34 C.F.R. Secs. 303.209(c)(1); Cal. Ed. Code Sec. 56426.9(b); 17 C.C.R. Sec. 52112(a).]

Six months before the child's third birthday, 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; and
- (2) Notify the local school district that there will be an IFSP meeting at least three months before the child turns three. Everyone must agree on a date for this meeting at least 30 days after the service coordinator's notice.

[17 C.C.R. Sec. 52112 (b).]

For children who *may not* be eligible for special education, a transition plan must still be developed by the lead agency, the family and relevant service providers. This plan must assure a smooth transition from Part C to other appropriate services for which the child is eligible. [34 C.F.R. Sec. 303.209(c)(2); Gov. Code Sec. 95020(d)(8); 17 C.C.R. Sec. 52112(c).]

Federal law provides that families are included in transition planning. [34 C.F.R. Sec. 303.209(d)(1)(ii).]

## **25. What happens at the transition planning meeting?**

Federal law requires that the parent, school district and regional center (if the district is not the lead agency) discuss possible preschool special education services, as well as the transition steps, including:

- (1) Future placements and parent regarding these placements;

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- (2) Procedures to prepare the child for changes in service delivery and adjustments to new settings; and
- (3) Transmission of information and records to the school district.

[34 C.F.R. Sec. 303.344(h).]

In addition, state law requires that:

- (1) Parents are provided information about community resources;
- (2) Information about the child is sent to the school district, including IFSPs (with the parent's consent), and any necessary assessments by the district and regional center to determine eligibility and the timelines for completing assessments;
- (3) A projected date for conducting a final review of the IFSP is determined;
- (4) Steps are taken to ensure that the referral to the district is received in enough time so that assessments are completed, and an IEP implemented, by the child's third birthday;
- (5) Referral to the district occurs no later than the time a child reaches age 2 years, 9 months, or before the district's break in services if the child will turn 3 during that break; and,
- (6) The people responsible for convening an IEP and final IFSP meeting are identified. [17 C.C.R. Secs. 52112(c) & (d).]

To avoid gaps in services and delays in developing and implementing an IEP, parents should know and keep track of the steps leading up to the transition so that the necessary steps are taken in a timely fashion.

**26. What is the school district's responsibility to participate in the transition from early intervention to preschool special education services?**

If the local school district is the lead agency, it must also ensure that the child experiences a smooth and effective transition to preschool programs. [20 U.S.C. Sec. 1437(a)(9); Cal. Ed. Code Sec. 56426.9(a).] It must ensure that an IEP has been developed and is being implemented by the time of the child's third birthday.

[34 C.F.R. Sec. 300.124(b); Cal. Ed. Code Sec. 56426.9(b).] 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).] The district must participate in transition planning conferences arranged by the regional center. [20 U.S.C. Sec. 1437(a)(9)(A)(ii); Cal. Ed. Code Sec. 56426.9(c).]

**27. How do I file a complaint about an agency's failure to follow required procedures or to provide the services specified in my child's IFSP?**

No matter whether the lead agency is the regional center or the school district, you can file a written complaint with:

California Department of Developmental Services  
Office of Human Rights and Advocacy Services  
Attn: Early Start Complaint Unit  
1600 Ninth Street, Room 240, M.S.- 215  
Sacramento, CA 95814

If you have trouble putting a complaint in writing, your child's service coordinator must assist you. The complaint must include your name, address and telephone number and a statement describing the violation by the regional center, school district, or private service provider. The statement must include the facts on which your complaint is based, the name of the person or entity responsible for the failure, and a description of any steps that you have already taken to resolve the complaint. This is the only complaint process that 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.

DDS must receive your complaint no later than one year after the date the violation occurred. In some cases, the complaint may be received after a year has passed, if the violation continues and affects your child or other children.

In addition, if you are requesting reimbursement or “corrective action” of the complaint, it can be received by the Department up to three years after the date of violation.

[17 C.C.R. Sec. 52170.]

Within 60 days of getting the complaint, DDS must:

- (1) Assign the complaint to a state inter-agency team or to another appropriate state agency;
- (2) Investigate;
- (3) Give you an opportunity to submit additional oral or written information;
- (4) Review all relevant information;
- (5) Determine whether there has been a violation of any law affecting your child; and,
- (6) 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.

In certain limited circumstances, DDS may extend the 60-day timeline.

Corrective actions may include monetary reimbursement, assurances that appropriate services are provided in the future, and/or other corrective actions appropriate for your child or family.

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

## **28. What are my “due process” rights?**

You must be given written notice (in the language of the parent’s choice, where feasible) 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. Even those children who are identified (but never made eligible) are entitled to written notice of the agency’s refusal to provide services. The written notice must give enough details to inform you about what the

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agency is proposing or refusing, the reasons for it, and all of the rights and procedures you have to challenge the proposal or refusal. [17 C.C.R. Sec. 52161.]

You must be given an opportunity to present your 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 follow laws or procedures or to carry out the service identified in the IFSP. Due process is to resolve disputes about your child’s eligibility for the program or about what services should go into his 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 your 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.]

However, you may enter into a voluntary mediation conference to try to resolve the dispute between you and the agency without holding a hearing. You can even do this without having to first request a hearing. Although mediation (with a state mediator) is not required, it is useful to resolve at least some, if not all, of the disputed issues without the expense and effort of a hearing. The mediation, hearing and receipt of a written decision should take no more than 30 days from the date of your request for due process. [17 C.C.R. Secs. 52172 - 52173.]

If your child is already receiving services under an IFSP, and the agency wants to reduce or terminate some or all services, your 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).] This is commonly called “stay put.”

For a mediation conference or hearing, you must mail a written request to:

Office of Administrative Hearings  
2349 Gateway Oaks Drive, Ste. 200  
Sacramento, CA 95833  
Telephone: 916-263-0654

Facsimile: 916-376-6318

Attn: Early Start

**29. My child is about to turn three. At the initial IEP meeting, the school district disagrees with me about the special education services he needs. If I file for due process, will he continue to receive Early Start services until the disagreement is resolved?**

No. If at the initial IEP meeting you and the district disagree about which services your child will need, you may resolve the disagreement by filing for due process. Until the disagreement is resolved, your child is not entitled to continue receiving early intervention services from the school district or regional center. The district may, however, offer your child fewer or *other* services. If you give your consent, the district must provide those services while your dispute is pending.

If your child is a regional center client, you have the option of requesting an Individual Program Plan (IPP) meeting to discuss continuation of Part C services. The regional center *may* continue providing services: (1) until the beginning of the next school term following your toddler's third birthday (when the district's special education preschool program is not in session); *and* (2) the team determines services are necessary until the preschool program resumes. [34 C.F.R. Sec. 300.518(c); Cal. Ed. Code Sec. 56505(d); 17 C.C.R. Sec. 52112(f).]

**30. What happens at a due process hearing?**

The hearing is conducted by an impartial state hearing officer (administrative law judge (ALJ)) who has no personal or professional interest which would conflict with his objectivity and who is knowledgeable about the relevant laws. He must listen to the different witnesses who testify for both sides and examine the evidence presented. He must mail you a written decision, which includes findings of fact, within 30 days of the time you or the service agency requested a due process mediation or hearing. [17 C.C.R. Sec. 52174.]

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For information prepared by DDS on due process and complaint procedures — and a general overview of parents' rights and responsibilities — visit [http://dds.ca.gov/EarlyStart/docs/Parents\\_Rights\\_Guide\\_Sum\\_Eng.pdf](http://dds.ca.gov/EarlyStart/docs/Parents_Rights_Guide_Sum_Eng.pdf). Also, see Chapter 6, *Information on Due Process/Compliance Procedures*.