

SPECIAL EDUCATION RIGHTS AND RESPONSIBILITIES

Chapter 13

Information on Preschool Education Services

TABLE OF CONTENTS

Question	Page
1. What is the federal law that requires preschool education services?	1
2. What is the purpose of preschool education services?	1
3. Are all school districts responsible for full implementation of services for 3- to 5- year-old children?	2
4. What are the eligibility criteria for children with disabilities who are three to five years old?	2
5. Can my child be made eligible for special education under a so-called “speech only” category?	4
6. If I think my child needs services, who should I contact?	4
7. For children receiving early intervention services, what are the transition requirements for children who reach the age of three?.....	5
8. What happens at the transition planning meeting?.....	6
9. My child is now receiving Early Start services. At our initial IEP meeting, the school district disagrees with me about her need for special education services.	

Information on Preschool Education Services

Will she continue to receive Early Start services until the disagreement is resolved?
7

10. What instructional services are available to my preschool-aged child?7

11. Is my child entitled to related services?8

12. Should my child be provided preschool services individually or in a group? .8

13. If my child is eligible for special education services, where will she receive them?9

14. Will my child be able to participate in educational activities with non-disabled children?9

15. Do districts ever pay tuition at a private preschool?10

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Chapter 13

Information on Preschool Education Services

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

Public Law (PL) 99-457, passed in 1986, is a federal law that expands services for children from birth to 5-years-old who need special education. This law is now part of the Individuals with Disabilities Education Act (IDEA) and makes grants available to states to provide special education and related services to children with disabilities ages 3-5. [20 United States Code (U.S.C.) Section (Sec.) 1419.] In California, early educational opportunities shall be made available to children younger than three years of age. [California Education Code (Cal. Ed. Code) Sec. and following; Government Code (Cal. Govt. Code) Sec. 95000 and following.] See Chapter 12, *Information on Early Intervention Services*.

2. What is the purpose of preschool education services?

The California Legislature states that these are some of the benefits of preschool education programs provided in a “typical environment” appropriate for young children and with active parent involvement:

- (1) Significantly reduce the potential impact of any disabling conditions and help prevent the development of secondary disabling conditions;

- (2) Produce substantial gains in the following areas of development: physical, cognitive, speech and language, psychosocial and self-help; and
- (3) Reduce family stress, societal dependency and institutionalization, and the need for special day class placement once a child reaches school age.

[Cal. Ed. Code Sec. 56441.]

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

Yes. Under California law, all school districts have a mandate to provide special education and services for all eligible children between the ages of three to five years, inclusive. [Cal. Ed. Code Secs. 56001(b) & 56440(c).]

If a child is already receiving “early intervention” or “Early Start” services from the district, the district must ensure that she experiences a smooth and effective transition to preschool programs. [20 U.S.C. Sec. 1437(a)(8); Cal. Ed. Code Sec. 56426.9(a).] It must also ensure that an individual education program [IEP] has been developed and is being implemented by the time of the child’s 3rd birthday. [Cal. Ed. Code Sec. 56426.9(b); 34 Code of Federal Regulations (C.F.R.) Sec. 300.124(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)(8); Cal. Ed. Code Sec. 56426.9(c).] See Chapter 12, *Information on Early Intervention Services*.

4. What are the eligibility criteria for children with disabilities who are three to five 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:

- Autism;
- Deaf-blindness;

Deafness;
Emotional disturbance;
Hearing impairment;
Mental Retardation;
Multiple disabilities;
Orthopedic impairment;
Other health impairment (includes attention deficit disorder or attention deficit hyperactivity disorder);
Specific learning disability;
Speech or language impairment in one or more of voice, fluency, language, and articulation;
Traumatic brain injury;
Visual impairment; or
Established medical disability.

All of these conditions, except No. 14, are defined in Code of Federal Regulations Chapter 34, sections 300.8(c) and California Code of Regulations, Chapter 5, section 3030.

An “established medical disability” is defined in as “a disabling medical condition or congenital syndrome that the IEP team determines has a high predictability of requiring special education and services.” [Cal. Ed. Code Sec. 56441.11(d).]

In addition to meeting the criteria of one or more of the disabling conditions, a child must need “specially designed instruction or services” to qualify for special education. Also, the child must have needs that cannot be met by modifying the home or school (or both), without ongoing monitoring or support. [Cal. Ed. Code Secs. 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. Can my child be made eligible for special education under a so-called “speech only” category?

Many districts use this label when students transition into the school district at age three. In fact, there is no special education eligibility category in federal or state law called “speech only”. A child may be eligible for special education solely to receive speech and language services. However, the child must meet the eligibility criteria for speech and language impairment. [34 C.F.R. Sec. 300.8(c)(11); 5 C.C.R. Sec. 3030(c).]

Use of the label “speech only” may result in the denial of a “free appropriate public education” because your child will not be assessed in all areas of suspected disability. [34 C.F.R. Sec. 300.304(c)(4); Cal. Ed. Code Sec. 56320(f).] When the district asks for your consent for an initial assessment, be sure that the assessment plan will evaluate all of your child’s needs — not just speech and language. Otherwise, you should not sign the assessment plan, but ask the district to conduct a comprehensive assessment. If the district refuses to do so, you may file a compliance complaint with the California Department of Education. See Chapter 2, *Information on Evaluations/Assessments* and Chapter 6, *Information on Due Process/Compliance Procedures*.

6. If I think my child needs services, who should I contact?

You should write a letter to your local school district administrator (for example, the principal or special education director) to request an assessment or evaluation for your child. [5 C.C.R. Sec. 3021; Cal. Ed. Code Secs. 56029, & 56300 - 56329.] Under state law, your district must give you an assessment plan within 15 days of receiving your written request for special education services, unless the district disagrees with the need for assessment. If the request is made 10 days or less before the end of the school year, 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 in writing. [Cal. Ed. Code Sec. 56321(c).] See Chapter 2, *Information on Evaluations and Assessments*.

If a standardized test is considered invalid for children between the ages three and five years, evaluators 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. 56441.11(e).]

An IEP must be developed as a result of the assessment within 60 days from the date the district receives your written consent for assessment (not counting days between school sessions, terms or vacations that are longer than five days).

However, if the request was made 30 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(a).]

7. For children receiving early intervention services, what are the transition requirements for children who reach the age of three?

For children who have participated in Early Start 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. [34 C.F.R. Secs. 300.124(a) & (b).]

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 Individual Family Service Plan [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 (a) & (b).]

Federal law provides that families are included in transition planning. [34 C.F.R. Sec. 303.148(a).]

8. 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 for early intervention services) discuss possible preschool special education services, as well as the transition steps, including:

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

9. My child is now receiving Early Start services. At our initial IEP meeting, the school district disagrees with me about her need for special education services. Will she 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 the early intervention services she had been receiving from the school district or regional center. [34 C.F.R. Sec. 300.518(c); Cal. Ed. Code Sec. 56505(d).] 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. See Chapter 6, *Information on Due Process/Compliance Procedures*.

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

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

Services must meet the unique needs of your child in accordance with IDEA. Your child's IEP must include these services and a statement of areas of need. The rights and services for three to five year old children under IDEA are the same as those for children aged 5 to 22. 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 self-esteem
- (6) Access to developmentally appropriate equipment and specialized materials.

[Cal. Ed. Code Sec. 56441.3(a).] See Chapter 4, Information on IEP Process.

11. Is my child entitled to related services?

Yes. Your child is entitled to any of the related services included in IDEA, if needed. 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*.

12. Should my child be provided preschool services individually or in a group?

Your child's program may include both individual and small group services, as described above, available in age-appropriate environments (including the home), and with opportunities for parent involvement. [Cal. Ed. Code Sec. 56441.2.]

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 team, you may request more than four hours per day, if you feel your child needs those additional hours in order to receive a "free, appropriate public education." The IEP must be designed to be meet the unique needs of your child. [Cal. Ed. Code Sec. 56441.3(b).]

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

Your child may receive services at a public or private non-religious preschool, a child development center, family day care home, your own home, preschool program for children with and without disabilities located near each other, or “a public school setting which provides an age-appropriate environment, materials and services...” 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 & 56443(a).]

14. Will my child be able to participate in educational activities with non-disabled children?

Yes. 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. 300.116.] The district must provide a program with non-disabled peers if a child’s IEP team determines that this is appropriate. However, if the district has no preschool program for children without disabilities, there is no federal requirement to establish district-wide programs — or contract with private schools — for the sole purpose of implementing the LRE requirements. Courts have not made a distinction between school-age and preschool age when addressing the requirement that children with disabilities be educated in the company of children without disabilities. [*L.B. and J.B. v. Nebo School District* (10th Cir. 2004) 379 F.3d 966.]

Where there are no established programs for preschoolers without disabilities, the LRE requirement could be met by alternative means. For example, your child may attend (full- or part-time) a preschool program serving children *without* disabilities (such as Head Start). Your child may instead attend a preschool program for children with disabilities located on a school site serving nondisabled, *school-aged* children. Lastly, the district may pay for placement in a private preschool and provide supplemental services. [Cal. Ed. Code Secs. 56441.4 & 56443(a).]

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

15. Do districts ever pay tuition at a private preschool?

Yes. In order for a district to use state special education funding to place a child in a private preschool, the preschool must be certified by the state as a nonpublic school. [Cal. Ed. Code Sec. 56034.] However, the district is not prohibited from paying for private preschool placement out of its general funds if there is no appropriate, least restrictive, and certified preschool program available.

It may be necessary to use due process to show that a private preschool is the appropriate, least-restrictive educational program for your child. If you "prevail" at hearing, the district would have to pay for the noncertified preschool program out of its general funds.

Should there be a "waiting list" for services for my child?

No. Under federal and state law, waiting lists are not allowed. The IEP must be implemented as soon as possible following the IEP meeting. There can be no undue delay in providing special education and related services. The IEP should specify projected dates to begin services. [34 C.F.R. Secs. 300.320(a)(7) & 300.323; 5 C.C.R. Sec. 3040.]