



States and local school districts are required by federal law to educate preschool age children with disabilities in typical early childhood programs alongside children who do not have disabilities to the maximum extent appropriate. This policy brief provides an overview of the law and sets forth a list of policy recommendations that can help ensure that children with disabilities receive an appropriate public education in the least restrictive environment. It is intended to serve as a resource for policy makers and advocates seeking to increase inclusion in state funded pre-k programs.

The Individuals with Disabilities Education Act (IDEA)

The requirement to include children with disabilities in pre-k classrooms side-by-side with their typically developing peers is found in federal laws and regulations, as well as many state laws. The most important of these and the focus of this policy brief is the federal Individuals with Disabilities Education Act (IDEA). IDEA provides federal funding to states to meet the educational needs of children with disabilities. In exchange, states agree to comply with

Summary of State Policy Recommendations

- Create and Disseminate an Explicit Policy of Inclusivity
- Provide Appropriate Teacher Training and Support
- Provide Support and Assistance to Schools, Families, and Communities
- Make Disability an Eligibility Factor for Targeted Programs
- Encourage Braiding and Blending of Funding Streams
- Support the Construction of Accessible Facilities and the Use of Adaptive Modifications
- Facilitate Communication and Coordination Between State and Local Agencies
- Create Curricula and Guidelines That Promote Inclusive Practices

IDEA's substantive and procedural requirements. The duties imposed by IDEA apply only to state and local public education systems, not other public or private educational programs (although private schools that contract with public schools to deliver special education and related services may be subject to some of IDEA's requirements). Other federal laws, summarized in Appendix A, may govern the inclusion of children with disabilities in non-public school programs.

IDEA Terminology

A “**child with a disability**” is defined in IDEA as a child with at least one of ten specifically defined physical, emotional, learning, or cognitive disabilities and who, by reason of the condition, needs “special education” and “related services.” At the discretion of the state, the definition may also include children ages three through nine, or any subset of that age range, who are experiencing “developmental delays.”¹

Special education is “specially designed instruction ... to meet the unique needs of a child with a disability;”² **related services** “means transportation, and such developmental, corrective, and other supportive services. . . as may be required to assist a child with a disability to benefit from special education.”³

A child with a disability is entitled to a “**free appropriate public education,**”⁴ or **FAPE**, in the “**least restrictive environment (LRE).**”⁵ The term FAPE is defined as pre-k through secondary school special education and related services that are provided at public expense, without charge to the parent, under public supervision and direction; meet the state's educational standards; and address the individualized educational needs of the student.⁶ IDEA's least restrictive environment directive requires the inclusion of children with disabilities in the general education program to the maximum extent appropriate.

IDEA requires the **state educational agency (SEA)** to have in place policies to assure that all children with disabilities in the state receive FAPE.⁷ An SEA's obligations include establishing state standards for the education of children with disabilities, monitoring and evaluation of educational programs to assure compliance with state standards and federal law, and developing a comprehensive state plan for delivery of special education and related services in accordance with IDEA's requirements.⁸

A **local educational agency (LEA)** is responsible for the identification and evaluation of children with disabilities and for the provision of FAPE to children found to be eligible for special education and related services.⁹ IDEA requires LEAs to provide a child with a disability with an **individualized education program (IEP)** that accounts for the child's disabilities, offers the opportunity for significant learning, and allows the child to make meaningful educational progress.¹⁰ The IEP must be developed by a group of individuals, known as the IEP Team, consisting of the child's parents, the child when appropriate, one special education and one general education teacher, knowledgeable members of the LEA's professional staff, and others with expertise or knowledge regarding the child, as appropriate. No child may be excluded from school on the grounds that his or her disability is too severe to benefit from education.¹¹ IDEA recognizes that every child is able to learn, and requires educational opportunities to be provided for all.¹²

Free and appropriate pre-k programs must be provided to all children between the ages of three and five who have one or more of the disabilities enumerated in IDEA.¹³ Local Education Agencies (LEAs) also may use IDEA pre-k funds to serve two-year-olds who will turn three during the school year.¹⁴ Additionally, states have discretion to provide free appropriate public education, or FAPE to pre-k-age children with “**developmental delays**” who, as a result thereof, need special education and related services. Only delays in the areas of physical development, cognitive development, communication development, social or emotional development, and adaptive development are covered under IDEA.¹⁵ Further, states must have the capacity to measure developmental delays “by appropriate diagnostic instruments and procedures.” If a state opts to serve pre-k children with developmental delays, those children are entitled to the same treatment and protections as all other children with disabilities covered by IDEA.¹⁶

Benefits of High Quality Pre-K for Children with Disabilities

Rigorous educational research consistently shows that at-risk children who attend high-quality pre-k programs demonstrate gains in early learning skills and throughout their K-12 years.¹⁷ Significantly, research also shows that children with disabilities who attend pre-k in inclusive environments demonstrate gains in social skills, self-regulation, language development, and cognition.¹⁸ Moreover, integrating children with disabilities into typical pre-k programs does not simply improve the educational experience for the children with disabilities—pre-k classrooms that utilize inclusive materials and curricula, along with appropriate supports and services, provide social and educational benefits to the general pre-k population as well.¹⁹

As with K-12 schoolchildren with disabilities, pre-k children have the right to a free and appropriate public education in the least restrictive environment, or LRE. The law requires that pre-k children with disabilities receive their education together with children without disabilities to the maximum extent appropriate. Hence, the vast majority of pre-k children with disabilities should be placed in typical early education programs. An LEA may meet its obligation to provide inclusive pre-k services by placing a child in a district pre-k or in any of the other programs available in the community for the general population, such as a Head Start program, or a private, community-based pre-k program.

LEAs are required to have a wide range of pre-k placement options to meet the unique needs of each child. If placement outside of a typical early childhood classroom is necessary for a child's educational benefit, an LEA still must include the child in programs with children who do not have disabilities to the maximum extent possible. The individualized education program, or IEP, of a pre-k child provides the LRE framework. In addition to specifying the child's special education and related services, the IEP must include, among other components, a statement of how the child's disability affects his or her participation in appropriate pre-k activities.²⁰

The IEP also must address necessary **"supplementary aids and services"**²⁵ to meet the child's unique needs. Included in

the definition of supplementary aids and services are "aids, services, and other supports that are provided in regular education classrooms or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate."²⁶ For example, a pre-k child with a disability may require an "assistive technology device" to be educated in a typical pre-k program.²⁷ Frequently used assistive technology devices include computers, augmentative communication devices, wheelchairs and bus adaptations. The IEP team is further required to consider program modifications and supports for school personnel, such as staff training and professional development that enable the child to receive an appropriate education in the LRE.²⁸

Inclusion: The Least Restrictive Environment

IDEA requires that children be educated in the **least restrictive environment (LRE)** possible, given their individual needs.²¹ This means that they must have the opportunity to interact with, and be educated with, children who do not have disabilities, to the maximum extent appropriate. There is a strong presumption in favor of educating children with disabilities in the general education classroom, with appropriate supplementary aids and services to facilitate such placement. A child's placement in a segregated classroom or program is permissible "only when the nature or severity of the disability ... is such that education in regular classes ... cannot be achieved satisfactorily."²² At all times, a child's LRE placement must be based on his or her unique abilities and needs, and must provide the opportunity for a meaningful educational benefit. An LEA must have a full continuum or wide range of alternative placements available for children with disabilities.²³ In all situations, placement must be provided in an appropriate educational setting as close to home as possible.²⁴

The Role of State-Funded Pre-K in Meeting IDEA's Inclusion Directive

Across the country, about 38 states have created state-funded voluntary high quality pre-k programs for three- and four-year-olds, and more states are beginning to look at the feasibility of implementing such programs.²⁹ In addition, many states with pre-k programs are working on improving the quality of those programs and increasing access for larger populations of children. (See Appendix B for a definition of a high quality program).

However, inclusion at the pre-k level presents a unique set of challenges. Unlike K-12 education, which is available through the public schools to all students in every state, LEAs may not have a readily available source of inclusive pre-k settings. LEAs that do

IDEA — Inclusion of Children under Age 3

In addition to the requirements found in Part B of IDEA for special education and related services for three- to five-year-olds, Part C of IDEA provides for early intervention services for children birth to age three.³⁰ Unlike Part B, which obligates the public education system to provide educational services to pre-k children with disabilities, multiple agencies, including health departments and private agencies, are involved in the provision of early intervention services. Children are served under an “individualized family service plan” and services must be provided, to the maximum extent appropriate, in the “natural environment,” which is often the child’s home or other community program designed for typically developing infants and toddlers. States must have in place policies and procedures to ensure children with disabilities a smooth transition from the early intervention program to the pre-k program for three- to five-year-olds.

not operate a public pre-k program are not required to create one solely to meet IDEA’s LRE requirement, but they must explore other inclusion options, such as placing a child in another school district’s inclusive program or in a community pre-k program, with appropriate supports and services.³¹ Problems can arise, however, because there is no guarantee that other programs will be available within a reasonable distance of the child’s home or that they are sufficiently high quality to meet the child’s educational needs. In the absence of typical public or private pre-k programs, LEAs may have to resort to placing the child in a more restrictive classroom or school than called for in the child’s IEP, a situation that would not be countenanced for a K-12 student.³²

An insufficient number of inclusive programs explains, at least in part, why states are not meeting their obligation to educate pre-k children with disabilities in the least restrictive environment.³³ The most recent federal data show that the majority of pre-k children who are eligible for special education are placed in segregated special education classrooms or schools solely attended by children with disabilities—only 33% of these children were educated in typical early childhood settings.³⁴ There is an obvious need to significantly increase the number of programs where young children with disabilities can be educated in typical settings alongside pre-k children who do not have disabilities.

TABLE: NUMBER AND PERCENTAGE OF CHILDREN AGES 3 THROUGH 5 RECEIVING SPECIAL EDUCATION AND RELATED SERVICES IN AN *EARLY CHILDHOOD SETTING*^a UNDER IDEA, PART B, BY STATE (IN DESCENDING ORDER OF PERCENTAGE OF CHILDREN SERVED)

State	Number of Children	Percent of Children Served	State	Number of Children	Percent of Children Served
Rhode Island	2,108	72	California	20,588	33
Colorado	7,159	69	Montana	595	32
Maine	3,271	68	Oregon	1,600	28
Wyoming	1,460	63	Ohio	5,452	26
North Carolina	12,647	63	West Virginia	1,440	25
Vermont	936	62	Idaho	974	25
Illinois	19,291	56	Louisiana	2,938	25
New Mexico	3,334	54	Iowa	1,399	23
Delaware	1,047	53	Indiana	4,358	23
New Hampshire	1,310	48	Alabama	1,890	23
Pennsylvania	12,296	48	Alaska	445	22
Oklahoma	3,873	48	Connecticut	1,765	22
Michigan	11,477	48	Maryland	2,401	20
Kentucky	9,341	45	Arkansas	2,242	19
Georgia	9,341	45	Nevada	903	17
DC	257	44	Kansas	1,598	17
New York	26,482	44	Washington	2,268	17
Mississippi	3,558	43	South Carolina	2,015	17
North Dakota	630	41	South Dakota	445	16
Utah	2,967	41	Virginia	2,693	16
Massachusetts	6,000	40	Wisconsin	2,526	16
Minnesota	4,625	36	New Jersey	2,982	16
Tennessee	4,161	36	Hawaii	229	10
Arizona	4,675	35	Florida	2,813	8
Missouri	4,927	33	Texas	2,117	5
			Nebraska	167	4
			National Baseline	231,992	33

a. The category *early childhood setting* refers to educational programs designed primarily for children without disabilities.

Source: U.S. Department of Education, Office of Special Education Programs: "*Part B, Individuals with Disabilities Education Act, Implementation of FAPE Requirements*," 2004. Data Updated as of July 30, 2005.

State-funded pre-k programs offer states the opportunity to substantially increase the number of children placed in inclusive settings, as required by IDEA. In order to facilitate inclusion, however, state programs must be adequately funded to support access and high quality. A poorly funded program that fails to reach a large portion of the state's pre-k population will not generate enough classrooms to support inclusion. And without funding to implement key quality components, such as small class size, certified teachers, and developmentally appropriate curriculum, pre-k programs will be incapable of providing the “appropriate” education required by IDEA, i.e., one that offers pre-k children with disabilities the opportunity for significant learning and meaningful progress.

STATE STRATEGIES FOR INCREASING ACCESS AND PROMOTING INCLUSION OF CHILDREN WITH DISABILITIES IN HIGH QUALITY PRE-K PROGRAMS

Children with disabilities should have an equal opportunity to benefit from all aspects of a high quality pre-k program. Below are some examples of policies states have adopted to maximize the inclusivity and accessibility of their pre-k programs. Ideally, programs should incorporate *all* of these strategies to maximize access, quality, inclusivity, and effectiveness for children with disabilities, as well as their “general population” classmates.

1) Create and Disseminate an Explicit Policy of Inclusivity

The various inclusion regulations and guidelines disseminated by a state and its responsible agencies should not merely set forth the actions necessary to comply with federal and state law. To promote the acceptance of diversity and inclusive practices, a state ought to declare an explicit policy of inclusivity.

Illinois sets out its policy in a comprehensive “Least Restrictive Environment Guidance Paper,” holding schools, districts, and the state board of education responsible “for insuring that the needs of children with disabilities are addressed within environments most likely to result in their being able to participate in the school and in the community as productive citizens.”³⁵

Pennsylvania's inclusion guidelines set forth a comprehensive ten-point philosophy of inclusion, recognizing that, among other things:

- [C]hildren with developmental delays or disabilities should be supported in the same environments as their siblings, their neighbor's children and other children without disabilities,
- Inclusion is not defined as a location where services are provided; it is active participation with supports, and
- Everyone benefits from inclusion.³⁶

Nebraska's pre-k grant regulations declare that "All preschool age children, regardless of their abilities, disabilities, or the social, linguistic, or economic diversity of the children's families are eligible to be served with grant funds."³⁷

West Virginia's regulations provide that "WV Pre-k classrooms shall ... be inclusive of all children."³⁸

New Jersey's pre-k regulations require district boards of education to "ensure the inclusion of children with disabilities in general education settings to the maximum extent possible. . ."³⁹

2) Provide Appropriate Teacher Training and Support

Teaching children with disabilities can require greater intervention and support from teachers and other adults. Specialized education and training, and continuing professional development, are essential to inclusion and can help improve the quality of instruction for all children in the classroom.

New Jersey pre-k regulations mandate teaching supports to facilitate inclusion. School districts in New Jersey are required to create pre-k intervention and referral teams composed of psychologists, social workers, and learning specialists⁴⁰ that must (among other duties):

- Consult with "master teachers" and pre-k classroom teachers to adapt and modify teaching practices and educate families to help pre-k children meet state early learning standards.

- Visit classrooms and make recommendations about appropriate strategies, classroom modifications, and the selection of adaptive materials
- Provide professional development for instructional staff and administrators to facilitate pre-k inclusion
- Decrease the number of referrals to special education.⁴¹

In addition, **New Jersey's** guidelines recommend that for every ten pre-k classrooms serving children with special needs, districts provide an "Inclusion Master Teacher" certified to teach children with disabilities.⁴² These inclusion specialists "provide specialized professional development and consultation to other master teachers and in-district and private provider teachers."⁴³

In **Arkansas**, pre-k teachers and paraprofessionals are required to have training in "Special Needs, including process, Special Education rules and regulations and IDEA."⁴⁴

3) Provide Support and Assistance to Schools, Families, and Communities

A policy of inclusivity is only an empty promise without supplying the information, resources, and supports necessary to effectively implement it. State departments of education and human services can provide technical assistance and resources via publications, websites, and specialized personnel to support local inclusion efforts.

The **Illinois** State Board of Education disseminates a detailed guidebook to "help communities establish a vision for inclusive early childhood practice and provide an impetus and ideas for how to proceed."⁴⁵ The guidebook provides case studies with illustrative examples of inclusion strategies, and discusses the need for collaboration, the various models of providing services, classroom inclusion strategies, and relationship building in schools and communities.

Iowa's Department of Education has developed a similar guidebook, offering implementation strategies, best practices for inclusion, and guidance on establishing IEPs and determining appropriately inclusive placements for children.⁴⁶

Pennsylvania's Office of Child Development and Early Learning has also promulgated inclusion guidelines that address all facets of developing inclusive

programs, from forming family and community partnerships, and identifying useful published and online resources, to enumerating “Keys to Successful Inclusive Practices.”⁴⁷

4) Make Disability an Eligibility Factor for Targeted Programs

The state of **Iowa**’s targeted “Shared Visions” program currently serves at-risk three- and four-year-olds.⁴⁸ Eighty percent must be low income, but 20% of the slots are open to children with developmental disabilities or birth defects, regardless of family income.⁴⁹

Kansas has an at-risk pre-k program for four-year-olds that serves children living in poverty, as well as children with other risk factors, including those who are “developmentally or academically delayed.”⁵⁰

In **Kentucky**’s pre-k program, all three- and four-year-old children with disabilities and developmental delays are eligible to participate alongside low-income four-year-olds.⁵¹

Michigan’s School Readiness Program serves “educationally disadvantaged” four-year-olds, who must display two or more risk factors out of a list of 25, including developmental immaturity, a long-term or chronic illness, “handicapping condition,” and language deficiency or immaturity.⁵²

5) Encourage Braiding and Blending of Funding Streams

In **Kansas**, school districts combine the children and resources from all of their programs for four-year-olds—special education, Head Start, Even Start, Title I, and Four-Year-Old At-Risk Program “in order to provide better service to all of the children.”⁵³

Kentucky’s pre-k program attempts comprehensive inclusivity and makes no distinction between programs for children with disabilities and programs for the general population. The Kentucky program serves all low-income four-year-olds and all three- and four-year-olds with disabilities. A provider’s program must be “designed to include and meet the needs of children across a wide range of abilities in an inclusive setting. Programs must provide adaptations for children with special needs. Unless a child’s IEP

requires otherwise, children with disabilities are to be educated in classes with typically developing children.”⁵⁴

6) Support the Construction of Accessible Facilities and the Use of Adaptive Modifications

Creating a pre-k environment that is accessible to children with physical disabilities may require altering the physical environment to increase participation, using adaptive devices and equipment, and modifying materials to promote independence.⁵⁵ These adaptations and modifications will often also benefit children without disabilities, and of course will facilitate closer and more frequent social interaction among children with diverse abilities.

Massachusetts recommends a variety of “Adaptations for Children With Disabilities” to be used in pre-k classrooms, including learning materials, furniture, and equipment designed to accommodate children with hearing, vision, and language disabilities, as well as physical disabilities.⁵⁶

Iowa’s 3-4-5 Thrive guidebook has in its appendix a multi-page survey for evaluating a general education classroom for the appropriateness of its adaptations and accommodations for children with disabilities.⁵⁷

7) Facilitate Communication and Coordination Between State and Local Agencies

Supervision and administration of early care and education, and special education services, is often compartmentalized in different state agencies. At the local level, too, counties, municipalities, and school districts may have different agencies or divisions implementing services for children with disabilities and non-disabled children. Greater levels of inclusion are more likely when communication and coordination is facilitated among these different entities. Multiple agencies can improve inclusive services and even save money when they create joint training opportunities, centralize technical assistance, and collaborate on strategic planning.⁵⁸

Georgia’s Bright from the Start program in the state Department of Early Care and Learning employs an Inclusion Coordinator who works closely with the Department of Education’s Division of Exceptional Students to ensure that pre-K children with special needs receive appropriate services.

8) Create Curricula and Guidelines that Promote Inclusive Practices

Many states are aware of the need to develop and implement inclusive curricula and guidelines. **Massachusetts's** program standards “reflect the importance of the inclusion of children with disabilities in all program activities with their peers and the need to adapt the environment, materials, and curriculum to meet children’s individual needs.”⁵⁹

Georgia's early learning standards contain general strategies and suggestions for providing accommodations and adaptations to create an inclusive environment in pre-k classrooms.⁶⁰ Furthermore, for each of the seven learning categories covered in the standards (Language and Literacy, Mathematics, Social and Emotional Development, etc.), a list of specific inclusion strategies is provided.⁶¹

Like Georgia, **Iowa's** early learning standards outline general principles of inclusion and accommodation.⁶² The specific standards for various developmental areas also include more directed adaptations to accommodate the needs of children with disabilities. For example, with respect to “Language Understanding and Use,” pre-k staff are advised to “use adaptive strategies and equipment (communication boards, computers, hearing aids, auditory trainers) to facilitate communication with children who have speech production difficulties.”⁶³

New Jersey's early learning standards focus on curricula and instructional practices for all three- and four-year-olds, including pre-k children with disabilities. Consequently, the learning standards recommend a variety of supports, adaptations, and program modifications to “provide children with disabilities the opportunity to develop their strengths and compensate for their learning differences as they work toward the learning outcomes for all children.”⁶⁴

Conclusion

Currently, states are not meeting their obligation under IDEA to educate pre-k children with disabilities in the least restrictive environment. State-funded early education programs present a unique opportunity for states to increase the number of children with disabilities served, but to attain that goal, states must adopt policies that actively promote and encourage inclusion, such as those presented in this brief. A vast

body of research has demonstrated that high quality pre-k programs are very effective at improving the school readiness of three- and four-year-old children, particularly those at risk of school failure due to poverty or other disadvantages. Children with disabilities should have an equal opportunity to benefit from these programs.

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For More Information

Child Care Law Center

<http://www.childcarelaw.org/pubs-issue.shtml>

Publications on inclusion of young children with disabilities.

Early Childhood Inclusion Bibliography

<http://ctserc.org/library/bibfiles/early-incls.pdf>

Early Childhood Research Institute on Inclusion

<http://www.fpg.unc.edu/~ecrii/>

ECRII was a five year national research project funded by the Office of Special Education Programs, U.S. Department of Education to study the inclusion of pre-k children with disabilities in typical pre-k, child care and community settings. The project ended on August 31, 2000.

The National Professional Development Center on Inclusion (NPDCI)

<http://community.fpg.unc.edu/npdci>

Works with states to ensure that early childhood teachers are prepared to educate and care for young children with disabilities in settings with their typically developing peers.

Wrightslaw—Least Restrictive Environment & Inclusion

<http://www.wrightslaw.com/info/lre.index.htm>

Links to special education law and advocacy articles, newsletters, cases, and practical guidance for parents, advocates, and attorneys.

About Education Law Center

Founded in 1973, ELC is recognized as one of the nation's premier education advocacy organizations working on behalf of public school children for access to an equal and adequate education under state and federal laws. ELC focuses on improving public education for disadvantaged children, and children with disabilities and other special needs, using multiple strategies, including public education and engagement, policy initiatives, research, communications and legal action.

ELC has achieved significant success in improving education for school children in New Jersey's high poverty urban school districts through implementation of the programs and reforms ordered by the New Jersey Supreme Court in the landmark *Abbott v. Burke* education equity case.

In addition, because of its expertise in school finance, preschool, and other areas of education law and policy, ELC provides support to attorneys and advocates in other states seeking to improve their public schools.

Education Law Center
60 Park Place, Suite 300
Newark, NJ 07102
Phone: 973-624-1815
Fax: 973-624-7339
Email: elc@edlawcenter.org
Website: www.edlawcenter.org

Appendix A: Summary of Federal Laws Promoting Inclusion of Pre-k

In addition to IDEA, there are other federal laws that support the inclusion of pre-k children with disabilities in typical early childhood programs.

Head Start program performance standards mandate that at least 10% of enrollment opportunities be available for children with disabilities.⁶⁵ Head Start agencies help states meet their IDEA inclusion obligation by contracting and/or collaborating with LEAs to provide an inclusive education program to pre-k children determined eligible for special education and related services. In addition, parents may choose to have their child served in a Head Start agency rather than using LEA services. In either instance, the LEA is responsible for the identification, evaluation and provision of a free appropriate public education for a child who meets IDEA eligibility criteria, although not necessarily for the actual delivery of the education and services. In situations in which the LEA contracts with a Head Start agency, the agency is responsible for providing the program and services in accordance with the child's IEP.

Section 504 of the Rehabilitation Act (Section 504) prohibits discrimination by programs receiving federal funds against individuals with “physical and mental impairment[s] which substantially limit[] one or more major life activities.”⁶⁶ Section 504 covers a broader range of individuals than IDEA, which limits eligibility based on specific disabilities. Public schools, Head Start agencies, and all other programs that receive federal dollars, either directly or indirectly, are bound by the requirements of Section 504. If a school district or other program receiving federal funds, either directly or indirectly, offers a pre-k program, Section 504 requires that it provide pre-k children with disabilities equal access to that program, with reasonable accommodations and modifications. A school district that does not operate a public pre-k program is not obligated under Section 504 to provide a program or services to pre-k children with disabilities.

Similar to IDEA, Section 504 requires a school district to provide FAPE in the least restrictive environment.⁶⁷ Typically, children who are eligible for Section 504 but not IDEA need accommodations, modifications and related services, but not special education services. Examples of accommodations or modifications for pre-k students include physical barrier removal, adjusted program schedule, and use of modified books

and writing instruments. Examples of Section 504 services include administration of medication, a behavioral plan, and occupational and physical therapy.

In addition to mandating the provision of services, Section 504 requires programs receiving federal funds to remove obstacles that prevent students from attending school with and participating in the same activities as their typically developing peers.⁶⁸ For example, a school district or community pre-k provider potentially violates Section 504 if it denies an eligible child physical or other access to a program, offers a program that is not as good or effective as that offered to children without disabilities, or provides a separate program or service for an eligible child instead of making reasonable changes that would allow access.

The ***American with Disabilities Act*** (ADA) extends the requirements of Section 504 to programs and institutions that do not receive federal funding. It prohibits discrimination against individuals with physical or mental disabilities in all settings—public schools, community pre-k programs, and private childcare and preschool—except for those operated by religious entities. The ADA requires that “public accommodations,” including private and public pre-k programs and child care centers, not discriminate against individuals on the basis of their disability. Similar to Section 504, pre-k programs must provide children with disabilities with an equal opportunity to participate in its programs and services. Unlike Section 504, the ADA does not require the provision of FAPE in the least restrictive environment.

The ADA requires reasonable modifications to program policies and practices to integrate children with disabilities, unless doing so would constitute a fundamental alteration. Pre-k programs must make their facilities accessible to persons with disabilities. Existing facilities are subject to the “readily achievable” standard for barrier removal, while newly constructed facilities and any altered portions of existing facilities must be fully accessible.

Appendix B: What is High Quality Pre-k?

The key components of a high-quality pre-k program include:

- Positive interactions between teachers and children.
- Good communication—teachers and children listening to one another and teachers encouraging children to use reasoning and problem solving.
- Daily opportunities for language and reasoning, science, math, block play, dramatic play, art and music. States should have comprehensive early learning standards that support a curriculum promoting such opportunities.
- Teachers and staff who are well educated and adequately compensated. Teachers should have bachelor's degrees with specialized training in early education, and salaries and benefits comparable to K-12 teachers. Assistant teachers should have a Child Development Associate credential or the equivalent.
- Active parent involvement and support.
- Low child-staff ratios (10:1 or less) and small group sizes (no more than 20).
- Supervision and evaluation of staff, with opportunities for professional growth, including at least 15 hours of annual in-service training.
- Well-equipped facilities suited to the needs of pre-k-age children, furnished with sufficient toys, books and materials.
- Appropriate nutritional services, with at least one meal a day.
- Screening, referral, and support services, including vision, hearing, and health screening.
- Periodic site visits by the state to monitor programs.⁶⁹

Endnotes

- 1 20 U.S.C. § 1401(3).
- 2 20 U.S.C. § 1401(29).
- 3 20 U.S.C. § 1401(26).
- 4 20 U.S.C. § 1412(a)(1)(A); 34 C.F.R. § 300.101(a).
- 5 20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.114(a)(2).
- 6 20 U.S.C. § 1401(9)(A)-(D); 34 C.F.R. § 300.17(a)-(d).
- 7 20 U.S.C. § 1401(32), An SEA is the state board of education or other agency or officer responsible for supervision of public elementary and secondary schools within the state.
- 8 20 U.S.C. § 1412, *et seq.*
- 9 20 U.S.C. § 1414, *et seq.* An LEA is defined in IDEA as the public board of education or other public authority legally constituted within a state as the administrative agency for the state's public education system. 20 U.S.C. § 1401(19).
- 10 *Ridgewood Bd. of Educ. v. N.E.*, 172 F.3d 238, 247 (3d Cir. 1999).
- 11 20 U.S.C. § 1412(a)(3)(A); 34 C.F.R. § 300.111(a)(i).
- 12 20 U.S.C. § 1400(d).
- 13 20 U.S.C. § 1401(3)(A)(i).
- 14 34 C.F.R. § 300.323(b).
- 15 20 U.S.C. § 1401(3)(B).
- 16 Not all states serve pre-k children in the developmental delay category. For example, California, Iowa, Montana, Ohio, and Texas do not use the category. *28th Report to Congress on Implementation of the Individuals with Disabilities Education Act*, (Office of Special Education Programs, United States Department of Education, 2006), vol. 1, B-8, Table B-2.
- 17 W. Steven Barnett, *Preschool Education and Its Lasting Effects: Research and Policy Implications*, (New Brunswick: National Institute for Early Education Research, Rutgers, The State University of New Jersey, 2008); L.N. Masse and W. Steven Barnett, *A Benefit-Cost Analysis of the Abecedarian Early Childhood Intervention*, in *Cost-Effectiveness and Educational Policy*, ed. H.M. Levin and P.J. McEwan (Larchmont, NY: Eye on Education, 2002); A.J. Reynolds et al., *Age 21 Cost-Benefit Analysis of the Title I Chicago Child-Parent Centers*, *Educational Evaluation and Policy Analysis* 24 (2002); Lawrence J. Schweinhart, *The High/Scope Perry Preschool Study through Age 40*, (Ypsilanti, Michigan: High/Scope Educational Research Foundation, 2004).
- 18 Holahan, A. & V. Costenbader, *A Comparison of Developmental Gains for Preschool Children with Disabilities in Inclusive and Self-Contained Classrooms*,

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19 Research Synthesis Points on Early Childhood Inclusion, National Professional Development Center on Inclusion (NPDCI) (2007), available at <http://community.fpg.unc.edu/resources/articles/NDPCI-ResearchSynthesis-9-2007.pdf/view>.

20 34 C.F.R. § 300.320 (a)(1)(ii); 34 C.F.R. § 300.304 (b)(1)(ii).

21 20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.114(a)(2).

22 20 U.S.C. § 1412(a)(5).

23 34 C.F.R. § 300.115.

24 34 C.F.R. § 300.116(b)(3).

25 20 U.S.C. § 1414(d)(1)(A)(IV)(cc); 34 C.F.R. § 300.320 (a)(4).

26 20 U.S.C. § 1401(33); 34 C.F.R. § 300.42.

27 20 U.S.C. § 1401(1)(A); 34 C.F.R. § 300.5.

28 *Id.*

29 W. Steven Barnett, Epstein, Dale J., Friedman, Allison H., Boyd, Judi S., Hustedt, Jason T. *The State of Preschool 2008: State Preschool Yearbook*, (New Brunswick: National Institute for Early Education Research, Rutgers, The State University of New Jersey, 2009) (hereinafter cited as "State Preschool Yearbook 2008.")

30 20 U.S.C. § 1431, et seq.

31 Fed. Reg. Vol. 71, 46589 (August 14, 2006).

32 See *T.R. v. Kingwood Tp. Bd. Of Educ.*, 205 F.3d 572 (3rd Cir. 2000) (holding that a hybrid pre-k program involving a half-day class composed of half children with disabilities and half typically developing children, with afternoon placement in a segregated program, would satisfy IDEA's LRE requirement only under two circumstances: first, education in the general classroom with supplementary aids and services could not provide an appropriate education; or, second, a typical pre-k program is not available within reasonable commuting distance of the child's home).

33 *28th Report to Congress on Implementation of the Individuals with Disabilities Education Act* (Office of Special Education Programs, United States Department of Education, 2006) vol. 1 at 35, Figure 1-13. States fare much better with children ages 6 to 21 (52% educated in the regular classroom), but still need to make significant improvements. *Id.* at 52, Figure 1-21.

34 *Id.*

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- 48 Iowa is currently phasing in universal voluntary pre-k for all four-year-olds.
- 49 Iowa Administrative Code § 281-64.8.
- 50 Kansas Four-Year-Old At-Risk Program, Grant Application Guidelines.
- 51 Kentucky Preschool Program Outline, 2008 at 1.
- 52 Michigan School Readiness Program Implementation Manual.
- 53 Kansas State Department of Education, *Four-Year-Old At-Risk Program Final
Evaluation*, (2002) at 1.
- 54 Kentucky Preschool Program Outline, 2008 at 4.
- 55 See How Preschool Teachers Include Children With Disabilities. ECR II Brief #13,
Early Childhood Research Institute on Inclusion (November 1999).
- 56 Massachusetts Department of Education, *Guidelines for Preschool Learning
Experiences*, (2003), Appendix A.
- 57 Iowa Department of Education, *3-4-5 Thrive: A Guide to Providing Educational
Opportunities in the Least Restrictive Environment (LRE) for Iowa’s Preschoolers
with Disabilities* (1999) at 45-51.
- 58 See Mezey, Neas, & Irish, *Coming Together for Children With Disabilities: State
Collaboration to Support Quality, Inclusive Child Care*, Center for Law and Public
Policy (2003) at 24.

59 Massachusetts Department of Education, *Early Childhood Program Standards and Learning Guidelines for Three-and Four-Year Olds*, (2003) at 5.

60 Georgia Department of Early Care and Learning, *Georgia's Pre-K Program Content Standards*, (2007) at 13.

61 For mathematics, for example, the standards suggest:

- Simplify a complicated task by breaking it into smaller parts or reducing the number of steps. ...
- Use modeling clay to form shapes instead of play dough with a child who has low muscle tone.
- Provide raised/textured objects for children with visual impairments. ...

Id. at 24.

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64 New Jersey Department of Education, *Prekindergarten Teaching & Learning Expectations: Standards of Quality* (2004) at 8.

65 45 C.F.R. § 1308, *et seq.*

66 29 U.S.C. §§ 705(20) and 794; 34 C.F.R. § 104.34(a).

67 34 C.F.R. §§ 104.33(a) and 104.34(a).

68 34 C.F.R. § 104.4.

69 See Linda M. Espinosa, *NIEER Policy Brief—High Quality Preschool: Why We Need It and What It Looks Like*, (New Brunswick: National Institute for Early Education Research, Rutgers, The State University of New Jersey, 2002); State of Preschool Yearbook 2008.