



## Policy Advisory - The Law on Early Childhood Inclusion

**INCLUSION** is the principle of enabling all children, regardless of their diverse abilities, to participate actively and fully within their communities. Since 1954, when *Brown v. Board of Education* held that *separate was not equal*, inclusion has been part of legal requirements governing educational opportunities. In 1972, the Economic Opportunity Act Amendment for Children with Disabilities in Head Start mandated that at least 10% of the children enrolled in Head Start have a disability. Section 504 of the Rehabilitation Act (1973) prohibited discrimination based on a disability in educational and preschool settings. In 1990, the Americans with Disabilities Act (ADA) required reasonable modifications to allow full participation for children with disabilities. The Child Care and Development Block Grant Act (2013) requires states to explain how they will meet the needs of children with disabilities. The primary legislative support for inclusion is the Individuals with Disabilities Education Act (IDEA). IDEA requires schools and early intervention agencies to support inclusion of children with disabilities. For infants and toddlers (ages 0-3), IDEA promotes the use of “natural environments” for early intervention services (§1432(4)(G)). For preschool and school age children (ages 3-21), IDEA requires that children with disabilities be educated in the “least restrictive environment” (§1412(a)(5) and §1413(a)(1)).

Taken together, these laws and regulations demonstrate the strong commitment of the U.S. Department of Education and the U.S. Department of Health and Human Services to early childhood inclusion. The purpose of this document is to share basic information about the federal laws and regulations with a specific focus on the IDEA and Head Start Program Performance Standards (HSPPS). It is important that Early Head Start / Head Start staff, early intervention, early childhood special education, and their early education partners (e.g., child care) have a shared knowledge and understanding of these laws and regulations.

### Considerations for compliance with inclusion requirements

IDEA can be complicated and the rules for inclusion are no exception. In addition, Head Start has a set of performance standards (HSPPS) on working with children with disabilities and their families that are aligned to the IDEA. For more information on federal laws and regulations, please review the federal webinar series on high quality inclusion on the [Early Childhood Learning and Knowledge Center \(ECLKC\)](#) website. Federal leaders from both the U.S. Department of Education and HHS discuss the laws, regulations, and resources through the lens of the three defining features of high quality inclusion: access, participation and support.

### Why do federal laws and regulations support early childhood inclusion?

In enacting IDEA and HSPPS, Congress and federal agencies recognized the benefits of inclusion. Section §1400(5) of IDEA states:

“Almost 30 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by . . . ensuring their access to the general education curriculum in the regular classroom, to the maximum extent possible.”

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In addition to the academic benefits of inclusion, courts have long recognized that there are other benefits to inclusion that are important to the quality of life of children with disabilities. Examples include making friends and an increase in acceptance among their peers (Daniel R.R. v. State Bd. of Educ., 1989; Sacramento City Sch. Dist. v. Rachel H., 1994). Federal laws and regulations recognize and support inclusion because of the developmental, educational, and social benefits that inclusion provides to children with disabilities.

### **How does federal law define inclusion and what does it involve?**

Inclusion is not defined in the law, but is supported through the mandates related to equal opportunity and natural and least restrictive environments. Together these requirements support inclusion in three ways. The first way is by requiring that children with disabilities be placed in the same settings as children who do not have disabilities. Secondly, children with disabilities must have access to the same curriculum as their peers. Lastly, children with disabilities must have access to full participation in academic and non-academic activities.

The Division for Early Childhood (DEC) of the Council for Exceptional Children and the National Association for the Education of Young Children (NAEYC) developed a joint position statement on early childhood inclusion. Their statement included definitions and descriptions of the key features of inclusion: access, participation and support. For more information, visit <http://community.fpg.unc.edu>

### **Guidance by age group— early intervention (ages 0-3) vs. special education (ages 3-21)**

The requirements for services in a natural environment (ages 0-3) and education in the least restrictive environment (ages 3-21) differ in two important ways.

First, for children 0-3 years of age, natural environments include homes and other community

locations—such as child care—where children without disabilities participate (§1432(4)(G)). The home is considered a *natural environment* for very young children even if they are not “included” with other children.

Second, for children 3-21 years of age, the least restrictive environment includes a continuum of placements from fully inclusive (the general education classroom) to fully separate (special education classroom or school) with a variety of options in between (§1412(a) (5)).

### **How does Head Start Support Inclusion?**

The Head Start Act of 2007 (45 USC 9801) establishes Early Head Start and Head Start as naturally inclusive settings by requiring that at least 10 percent of each agency’s actual enrollment be children with disabilities. These children with disabilities must be determined to be eligible for IDEA services (640(d)(1)).

The Head Start Program Performance Standards (HSPPS) maintain this requirement by building supports for effective inclusion throughout the standards. Programs must ensure that the teaching practices, materials, and daily routines promote healthy development and skill growth for all children (§1302.31). Additional standards address incorporation of developmentally appropriate learning experiences and for teachers, Family Child Care providers, and home visitors working with parents, to effectively implement these experiences in a well-organized learning environment (§1302.31(c), (§1302.31(a)(1)(iv)). Individualized services and supports must be offered to meet each child’s needs. Furthermore, children with disabilities must have access to a full range of activities and services so they can fully participate in a full range of activities and services (§1302.61(a)).

It is the responsibility of the Early Head Start or Head Start program to develop relationships and partnerships within the community. This includes collaborative relationships with individuals and agencies that provide services to children with disabilities and their families (§1302.53(2)(ii)).

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Programs must coordinate with the local agency responsible for implementing IDEA to identify children enrolled or who intend to enroll that may be eligible for IDEA services. Supports and services required by a child's IFSP or IEP must be provided and implemented effectively in coordination with the local agency and family. Other service partners (e.g., speech therapists, mental health consultants, etc.) must be involved in the process as well (§1302.61(c)).

Lastly, Early Head Start and Head Start programs must ensure that there is collaboration with parents of children with disabilities to ensure the needs of their child are being met. Programs must also ensure that the parents feel supported to advocate for their child's necessary supports and services (§1302.62). Children must receive all services, if applicable, in the classroom, and at minimum in the least restrictive environment. A partnership process must be implemented with all families to support family well-being and the child's learning and development. If applicable, programs must provide services and supports to children with disabilities (§1302.52).

### How to choose an inclusive placement

Choosing an inclusive placement is the responsibility of a team, including parents, who develop the Individualized Family Service Plan (IFSP) for children ages 0-3 or Individualized Education Program (IEP) for children ages 3-21. So how does the team select a placement and design a program to ensure they meet IDEA's requirements for inclusion in the natural or least restrictive environment?

#### Step 1– Begin by considering full inclusion

The first step in selecting an inclusive placement is to start by considering full inclusion. *Full inclusion* is a term used by professionals to refer to the most inclusive environment possible. This is defined by placement in a natural environment or general education classroom; access to the same curriculum and/or developmental opportunities as their peers; and full participation in classroom and non-academic

activities. While not all children with disabilities may succeed in a fully inclusive option, every step away from this ideal will be less inclusive and must be specifically justified in the child's IFSP or IEP (§1436(d)(5) and (§1414(d)(1)(A)(i)).

#### Step 2– Identify supplementary aids and services

Before moving toward a less inclusive setting, IDEA requires an IEP team to consider use of supplementary aids and services (§1412(a)(5)). Supplementary aids and services are defined by IDEA as “aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate” (§1401(33)).

IFSP teams are not explicitly required to consider supplementary aids and services for children ages 0-3. However, the requirements in the ADA and Sec. 504 to maximize placement in natural environments and to provide reasonable accommodations create a similar mandate. Put simply, if the child could succeed in a more inclusive environment through the use of assistive technology, additional classroom supports, or other means, these aids and services should be provided in the inclusive setting.

#### Step 3– Reduce inclusion only to ensure benefit

If, after identifying potential supplementary aids and services, it is determined that the child cannot learn or develop in a more inclusive setting because of his or her disability, it is appropriate to start considering a less inclusive program. The key is to reduce the level of inclusion only to the extent necessary to ensure the child will benefit from the less inclusive placement. To comply with the natural environment requirement for infants and toddlers (ages 0-3), selecting a service setting that is not a natural environment should be specific to the service and the need it addresses. If the IFSP team finds that some services cannot be successfully provided in a

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natural environment, it does not mean that all services must be provided in exclusive environments.

Selecting the least restrictive environment for children ages 3 - 21 means moving along the continuum toward a more exclusive setting one step at a time, or to modify the curriculum only to the extent necessary. If a child cannot be included in the general education classroom all the time, he or she might be able to participate part of the time and be included in nonacademic activities or extracurricular activities.

### Step 4– Record the decision in the IEP or IFSP

All aspects of the process for selecting the final choice of an inclusive program must be recorded on the IFSP or IEP (§1436(d) and §1414(d)(1)(A)). The written plan must record how the child’s disability affects his or her inclusion in the curriculum or learning activities. Any exclusion from an inclusive environment or natural environment must be justified based on the child’s disability. This includes exclusion related to nonacademic and extra-curricular activities. Aids, services, program modifications, and other supports that will be provided to increase inclusion must be identified.

### Suggested Citation

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### References and Resources

Americans with Disabilities Act of 1990 (ADA), Pub. L. No. 101-336. For complete source of information, go to <http://www.ada.gov>

Daniel R.R. v. State Board of Educ., 874F.2d 1036 (5th Cir. 1989). For complete source of information, go to <http://cases.justia.com>

Early Intervention Program for Infants and Toddlers with Disabilities. 76 Fed. Reg. 60140 (2011). For complete source of information, go to <http://www.gpo.gov/fdsys/pkg/FR-2011-09-28/pdf/2011-22783.pdf>

Federal Webinar Series on High Quality Inclusion (2016-2017). For complete set of resources, go to <https://eclkc.ohs.acf.hhs.gov/children-disabilities/article/series-high-quality-inclusion>

Head Start Program Performance Standards and Other Regulations. (2016). English. 45 CFR 1301-1305. For complete source of information, go to <https://eclkc.ohs.acf.hhs.gov/policy/45-cfr-chap-xiii>

Individuals with Disabilities Education Act of 2004 (IDEA), Pub. L. No. 108-446. For complete source of information, go to <http://idea.ed.gov/>

Rehabilitation Act of 1973, Pub. L. No. 93-112. For complete source of information, go to <http://www.ed.gov/about/offices/list/ocr/docs/edlite-FAPE504.html>

Sacramento City School Dist. v. Rachel H., 14 F.3d 1398 (9th Cir. 1994). For complete source of information, go to <http://cases.justia.com>