



# FACT SHEET

## YOUR CHILD'S RIGHTS IN EARLY EDUCATION SETTINGS: PREVENTING EXPULSIONS, SUSPENSIONS & EXCLUSIONS

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This fact sheet addresses the rights of young children facing exclusion in preschool settings in Pennsylvania, including child care and day care centers, Early Intervention, Head Start, private academic schools, and school district prekindergarten, among others. If one of these school settings seeks to exclude your child, here are some things you should know about your rights.

For more information regarding your child's right to early learning, see Education Law Center's fact sheets on "[Your Child's Right to Be Free From Discrimination in Preschool & Early Intervention: Questions & Answers.](#)"

### RACIAL DISCRIMINATION IN PRESCHOOL EXCLUSIONS

Preschools disproportionately suspend and expel Black and Brown children. For example, Black preschool children are *3.6 times more likely* to receive one or more out-of-school suspensions than white preschool children.<sup>1</sup> Nationwide, an estimated 174,000 preschool students were suspended by their schools in a single year, and nearly half of the suspensions of public preschoolers were Black children – even though they represented less than one-fifth of enrolled children.<sup>2</sup> Preschools disproportionately exclude Black and Brown students from the classroom due to structural and systemic racism, lack of equal access to early intervention services and health services to address developmental behavioral needs for Black and Brown children,<sup>3</sup> and individual racial biases of preschool staff. A recent study examining preschool discipline found that even though there were no differences in observed disruptive behavior based on a child's race, child-care providers complained about Black students' behavior more frequently than white students' and viewed Black students' behavior more negatively.<sup>4</sup>

Preschools suspend or expel children with disabilities and emotional challenges at a rate 14.5 times higher than for their typically developing peers.<sup>5</sup> This bias disproportionately impacts Black and Brown children who have the same disabilities and emotional challenges.

### IMPACT OF PRESCHOOL SUSPENSIONS AND EXPULSIONS

Too often, children are discriminatorily excluded from preschool, including through denials of enrollment, suspensions, and expulsions. Suspension and expulsion occur at high rates in preschool and are associated with negative educational and life outcomes.<sup>6</sup>

Research shows that preschool exclusions do nothing to teach appropriate behavior and deny children the opportunity to access the benefits of early childhood programs.<sup>7</sup>

Because of the clear negative consequences of preschool pushout, Pennsylvania's Office of Child Development and Early Learning (OCDEL) has stated:

1. All young children should be able to access and remain in a quality early learning program, and
2. Pennsylvania's early learning programs must work **to prevent, reduce, and ultimately eliminate suspension and expulsion** of young children from their programs.<sup>8</sup>

Since 2017, Pennsylvania early learning programs have been required to develop policies to prevent, reduce, and ultimately eliminate suspension and expulsion of young children from their programs.<sup>9</sup>

### WHAT IS A PRESCHOOL SETTING?

**Child Care/Day Care (Ages 0-5):** Available in family child-care homes, group child-care homes, and child-care centers. This includes programs through PreK Counts and PHL PreK programs.

**Early Intervention (Ages 0-5):** Serves children with developmental delays or disabilities, provides individualized support and assistance for both the child and the family.

**Head Start (Ages 0-5):** Federally funded programs that promote school readiness of infants, toddlers, and preschool-age children from families who qualify as low-income. Services are provided in a variety of settings, including centers, family child care, and children's own homes.

**Private Academic School (Ages 3-5):** Licensed by the Pennsylvania Department of Education and staffed by qualified teachers and other professionals. These may also be religious schools.<sup>10</sup>

**School District Pre-kindergarten (Ages 3 and 4):** Preschool programs administered by school districts to prepare children for kindergarten.

### WHAT DOES PRESCHOOL EXCLUSION LOOK LIKE?

**Exclusion** in the early childhood context includes suspension and expulsion, but it can also mean refusing to enroll a child in a program at all, as well as any other exclusion that is not considered a suspension or expulsion. Examples include:

- Telling a parent that the program does not accept children with IEPs or certain disabilities;
- Refusing to enroll a child based on housing status, foster care status, or another protected status; and
- Denying admission because a child is not toilet-trained.

**Suspension** in the early education context is any exclusion where a child is removed from a classroom as a consequence of their behavior for a specified period of time.<sup>11</sup> Examples include:

- Excluding a child from the classroom by placing them outside the room or in another part of the building;
- Sending a child home early or limiting the hours per day they can attend; and
- Preventing a child from attending because their one-to-one aide is sick.

**Expulsion** in the early education context is the permanent removal of a child from a program because of inappropriate behavior or challenging health conditions.<sup>12</sup> Examples include:

- Advising a parent that they must find new child care because their child is a “safety risk;”
- Unenrolling a child because they are “not a good fit” with the program;
- Removing a child because their one-to-one aide quit.

## HOW CAN PRESCHOOL EXCLUSION BE PREVENTED?

There are many ways that both schools and families can prevent preschool exclusion.<sup>13</sup> In schools, teachers and staff should seek to:

- Create positive climates and focus on prevention.
- Ensure sufficient staffing trained on classroom management.
- Consistently communicate with parents about a child’s changing behaviors and needs.
- Develop clear, appropriate, and consistent expectations and consequences to address disruptive behaviors.
- Ensure fairness, equity, and continuous improvement.

Families can participate in many ways, including:

- Engaging in a child’s learning and development.
- Engaging in individual educational planning for their child.
- Communicating with staff about their child’s behaviors and needs.
- Sharing strategies that help redirect, calm down, or refocus their child.

## WHAT SUPPORT SERVICES ARE AVAILABLE FOR YOUNG CHILDREN WITH CHALLENGING BEHAVIORS?

**Early Intervention:** A voluntary, free program that provides services, education, and support designed to meet the needs of children from birth to 6 years old with developmental delays, conditions, or disabilities. The aim is to maximize development during a period of rapid growth. For more information about Early Intervention, including how to qualify and special rights to prevent discrimination, see the section below titled “What Is Early Intervention?”

**Infant Early Childhood Mental Health Consultation Program:** A free resource that supports children’s social-emotional development from birth through age 5 within early learning programs participating in Keystone STARS. It encourages adults to build stronger relationships with infants and young children so that they feel safe, supported, and valued.

**County Mental Health or Community Behavioral Health (in Philadelphia):** Behavioral health services for qualified recipients of Medicaid, including young children, that can provide assessments, behavioral consultation, one-to-one support, and therapy.

**PA Family Centers:** Community services to help families become healthier, learn about their children’s development, engage in parent education and child development activities, access health care information, and receive information and assistance regarding health care services and

insurance and community resources such as well-baby care, immunizations, and early intervention services. To locate a Pennsylvania Family Center near you, call the Office of Child Development and Early Learning (OCDEL) at 717-346-9320.

**Family Check-Up:** Program designed to help parents address challenges that arise with young children before these concerns become more serious or problematic. Services include three visits with a family coach, and then families can choose from a menu of options, including interventions tailored to the needs of their family, parent skills training, preschool consultation, community referrals, and more.

**Parent to Parent of Pennsylvania (P2P of PA):** Links families of children with disabilities on a one-to-one basis with a peer supporter for purposes of support and information.

**Competence and Confidence Partners in Policymaking Early Intervention (C2P2EI):** A leadership training program for parents of children in Early Intervention, providing information on best practices, resources, and policy issues.

**Applied Behavior Analysis (ABA):** Individualized services that support young children to develop new skills and improve behavior. ABA therapy is highly individualized, meaning the specific goals and techniques are tailored to the unique needs of each person. ABA therapy often breaks a new skill into very small steps and rewards a child for each step to encourage a child's progress. Research shows that ABA therapy helps children with autism learn and that if a child starts at age 2, ABA can help a child develop better communication skills and learn to follow directions, which is critical to preparing a child to learn in school.<sup>14</sup> Though ABA is most frequently used to treat children with autism, it can also be helpful in treating children with conditions such as ADHD, oppositional defiant disorder, post-traumatic stress disorder, and traumatic brain injury, among others.<sup>15</sup>

### ARE THERE SPECIAL PROTECTIONS FOR MY CHILD WITH A DISABILITY OR HEALTH CONDITION TO ENSURE ACCESS TO PRESCHOOL?

Yes. **The Americans with Disabilities Act (ADA)** and **Pennsylvania Human Relations Act (PHRA)** prohibit discrimination against children with qualifying disabilities in preschool or day-care settings, including as applied to enrollment, equal access, program administration, and discipline.<sup>16</sup> Children with qualifying disabilities include:

- Children who receive Early Intervention services; and
- Children with a mental or physical condition that substantially limits major life activities (including thinking, walking, seeing, making friends, talking, etc.).<sup>17</sup>

Parents may request a “reasonable modification” or accommodation to ensure that a child with a qualifying disability can access a program.<sup>18</sup> Preschools must make **reasonable modifications** to their policies and practices to integrate children with disabilities into their programs. They must provide aids and services to ensure that children with disabilities can equally access programs and benefits.<sup>19</sup>

Preschools cannot exclude children with disabilities unless their presence poses a direct threat to the health or safety of others or necessary care would fundamentally alter the nature of the program.<sup>20</sup> A decision must be based on an individualized determination.

For more information, please visit the [Department of Justice's FAQ about Child Care Centers and the Americans with Disabilities Act](#) and see ELC's fact sheet on "[Your Child's Right to Be Free From Discrimination in Preschool.](#)"

### WHAT IS EARLY INTERVENTION?

Early Intervention (EI) is a free program for young children (birth to age 5) who have delays in their growth and development or have disabilities. Many children who are being excluded from preschool settings may already qualify for or be eligible for Early Intervention. EI programs provide services to help children grow and gain skills so that they are ready for school with their peers. The two programs are based on age: Infant and Toddler Early Intervention (Infant Toddler EI) for ages 0-3 and Preschool Early Intervention (Preschool EI) for ages 3 to school age. Learn more in our [Early Intervention fact sheet](#).

**You have the right to ask for an evaluation of your child.**

- If your child is under the age of 3, you should contact your county's mental health office and ask for an evaluation.<sup>21</sup> Once you agree to the evaluation, it must be **completed in 45 calendar days**.<sup>22</sup>
- If your child is 3 or older, but not yet old enough to attend kindergarten or first grade and you live in *Philadelphia or Chester City*, you should contact [Elwyn SEEDS](#) and ask for an evaluation.<sup>23</sup> Once you agree to the evaluation, it must be **completed in 60 calendar days**.<sup>24</sup> You will receive a written summary of the tests and recommendations.
- If your child is 3 or older, but not yet old enough to attend kindergarten or first grade and you live *anywhere else in Pennsylvania*, you should contact your county's [Intermediate Unit](#) and ask for an evaluation.<sup>25</sup> Once you agree to the evaluation, it must be **finished in 60 calendar days**.<sup>26</sup> You will receive a written summary of the tests and recommendations.

If you need help finding the right office for Early Intervention, you can call the statewide CONNECT Helpline at 1-800-692-7288.

### WHAT EARLY INTERVENTION SERVICES CAN HELP MY CHILD STAY IN PRESCHOOL?

With your service coordinator or representative from the Early Intervention program, you will develop an **individualized family service plan (IFSP)** if your child is an infant or toddler or an **individualized education program (IEP)** if your child is in preschool. This IFSP or IEP will include:<sup>27</sup>

- A statement of your child's current level of development;
- A statement of the family's strengths, priorities, and concerns as they relate to your child's development;
- Information or assistance to help you access community resources;

- Special considerations that relate to vision, hearing, challenging behaviors, communication, and needs related to assistive technology or transitions;
- The measurable goals or outcomes expected for your child and family, as well as how and when it is hoped they will be achieved;
- A description of early intervention services that are to be provided, as well as the setting in which they will occur; and
- A written plan for transitions as your child's needs change.

The Early Intervention services may include physical, cognitive, communication, social/emotional, and self-help support such as:<sup>28</sup>

- assistive technology,
- audiology or hearing services,
- speech and language services,
- counseling and training for family,
- medical services,
- nursing services,
- nutrition services,
- occupational therapy,
- physical therapy, and
- psychological services.

### WHAT ARE MY DISPUTE RESOLUTION OPTIONS IF I DISAGREE WITH THE EARLY INTERVENTION SERVICES PROVIDED TO MY CHILD?

You have several options if you disagree with a decision made by your county or Intermediate Unit or Elwyn SEEDS if you are in Philadelphia or Chester City regarding EI services relating to your child. If you are unable to resolve a dispute through an informal meeting, you may challenge these decisions by requesting:

- **Formal meeting** – Only available for infants and toddlers and should be held with county administrative staff to discuss and resolve the disagreement.<sup>29</sup>
- **IEP/IFSP facilitation** – A voluntary process that can be used when you and the county or Intermediate Unit think a neutral third party would help facilitate the drafting of the child's IEP or IFSP.<sup>30</sup>
- **Mediation** – A trained mediator will try to help your family and the agency resolve the disagreement without the need for a formal hearing.<sup>31</sup>
- **Impartial Due Process Hearing** – Impartial hearings can also be requested to challenge a placement or services. They are conducted by a state-appointed hearing officer who is not connected with your Early Intervention agency.<sup>32</sup>
- **State Administrative Complaint** – To use the state complaint system, a violation must have occurred within the year prior to your submitting the complaint.<sup>33</sup> The Bureau of Early Intervention Services and Family Supports will then investigate and send you a report within 60 days.<sup>34</sup> If the investigation finds problems, the state will require the county or IU to fix the problem.

For more information on IEP facilitation, mediation, or an impartial due process hearing, go to the website for the [Office for Dispute Resolution](#). You can use mediation or an impartial hearing described above, or you can submit a state complaint.<sup>35</sup> To file a state complaint, you can complete and submit this simple [form](#) and submit it to the Bureau of Early Intervention Services and Family Supports (BEISFS). You can submit the form by fax at 717-346-9330 or by email at [ra-ocdintervention@pa.gov](mailto:ra-ocdintervention@pa.gov).

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The Education Law Center-PA (ELC) is a nonprofit, legal advocacy organization with offices in Philadelphia and Pittsburgh, dedicated to ensuring that all children in Pennsylvania have access to a quality public education. Through legal representation, impact litigation, community engagement, and policy advocacy, ELC advances the rights of underserved children, including children living in poverty, children of color, children in the foster care and juvenile justice systems, children with disabilities, multilingual learners, LGBTQ students, and children experiencing homelessness.

ELC's publications provide a general statement of the law. However, each situation is different. If questions remain about how the law applies to a particular situation, contact ELC's Helpline for information and advice – visit [www.elc-pa.org/contact](http://www.elc-pa.org/contact) or call 215-238-6970 (Eastern and Central PA) or 412-258-2120 (Western PA) – or contact another attorney of your choice.

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<sup>1</sup> Office for Civil Rights, U.S. Department of Education, *Key Data Highlights on Equity and Opportunity Gaps in Our Nation's Public Schools* (2014); Cristina Novoa & Rasheed Malik, Center for American Progress, *Suspensions Are Not Support: The Disciplining of Preschoolers with Disabilities* (2018).

<sup>2</sup> Songtian Zeng et al., *Adverse childhood experiences and preschool suspension/expulsion: A population study*, 97 CHILD ABUSE & NEGLECT 104149 (2019), <https://www.sciencedirect.com/science/article/abs/pii/S0145213419303266?via%3Dihub>.

<sup>3</sup> Early Childhood Technical Assistance Center, *Fact Sheet: Advancing Racial Equity in Early Intervention and Preschool Special Education* (Jan. 5, 2023), [https://equity-coalition.fpg.unc.edu/wp-content/uploads/FactSheet\\_RacialEquity\\_2023.pdf](https://equity-coalition.fpg.unc.edu/wp-content/uploads/FactSheet_RacialEquity_2023.pdf); Natalie Slopen et al., *Racial and ethnic inequities in the quality of paediatric care in the USA: a review of quantitative evidence*. 8 RACISM AND CHILD HEALTH IN THE USA 147 (Lancet Child Adolescent Health, 2024), <https://www.thelancet.com/series/racism-child-health-USA>.

<sup>4</sup> Terri Sabol et al., *A window into racial and socioeconomic status disparities in preschool disciplinary action using developmental methodology*, ANNALS OF THE N.Y. ACAD. OF SCI. (Sept. 2021), <https://nyaspubs.onlinelibrary.wiley.com/doi/epdf/10.1111/nyas.14687>.

<sup>5</sup> Office for Civil Rights, U.S. Department of Education, *Key Data Highlights on Equity and Opportunity Gaps in Our Nation's Public Schools* (2014); Cristina Novoa & Rasheed Malik, Center for American Progress, *Suspensions Are Not Support: The Disciplining of Preschoolers with Disabilities* (2018).

<sup>6</sup> Dolores A. Stegelin, *Preschool Suspension and Expulsion: Defining the Issues*, INSTITUTE FOR CHILD SUCCESS (Dec. 2018).

<sup>7</sup> *Id.*

<sup>8</sup> *Preventing Suspension and Expulsion in Pennsylvania Early Childhood Programs*, Pennsylvania Office of Child Development and Early Learning (2022), <https://www.pakeys.org/wp-content/uploads/2022/10/Program-Guide-to-Suspension-Expulsion-10.27.22.pdf>.

<sup>9</sup> *Reduction of Expulsion and Suspension in Early Childhood Programs in Pennsylvania*, PA. DEP'T OF EDUC. (2017), at <https://www.education.pa.gov/Documents/Early%20Learning/Early%20Intervention/Laws%20Regulations%20and%20Announcements/Announcements/2017/EI%202017-02%20Reduction%20of%20Expulsion%20and%20Suspension.pdf>.

<sup>10</sup> Although religious preschools are licensed by the Pennsylvania Department of Education, if a religious preschool is operated by a religious organization, it may be exempt from complying with the Americans with Disabilities Act and Pennsylvania Human Relations Act. See 42 U.S.C. § 12187; 43 Pa. Stat. § 954(b) (2023).

<sup>11</sup> *Preventing Suspension and Expulsion in Pennsylvania Early Childhood Programs*, Pennsylvania Office of Child Development and Early Learning (2022), <https://www.pakeys.org/wp-content/uploads/2022/10/Program-Guide-to-Suspension-Expulsion-10.27.22.pdf>.

<sup>12</sup> *Id.*

<sup>13</sup> *Guiding Principles: A Resource Guide for Improving School Climate and Discipline*, U.S. DEP'T OF EDUC. (2023), <https://www2.ed.gov/policy/gen/guid/school-discipline/guiding-principles.pdf>.

<sup>14</sup> See Maria K. Makrygianni et al., *The Effectiveness of Applied Behavior Analytic Interventions for Children with Autism Spectrum Disorder: A Meta-Analytic Study*, 51 Res. Autism Spectrum Disorders 18 (2018).

<sup>15</sup> Is ABA Therapy Only for Autism?, AppliedBehaviorAnalysisEDU.org (Nov. 2021), <https://www.appliedbehavioranalysisedu.org/2021/11/aba-for-non-autistic-children/>.

<sup>16</sup> Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327 (codified as amended at 42 U.S.C. §§ 12101-12213 [2025]); Pennsylvania Human Relations Act of Oct. 27, 1955, P.L. 744, No. 222 (codified as amended at 43 Pa. Stat. §§ 951-963 [2025]).

<sup>17</sup> 42 U.S.C. § 12102 (1-2) (stating that “The term ‘disability’ means, with respect to an individual— (A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment” and that “For purposes of paragraph (1), major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working”).

<sup>18</sup> 42 U.S.C. § 12182(b)(2)(A)(ii) (2018).

<sup>19</sup> 28 CFR § 36.303(a) (public accommodation required unless it is an undue burden or requires a fundamental alteration of the program).

<sup>20</sup> 28 CFR § 36.302; 28 CFR § 36.208 (direct threat is a substantial risk of serious harm to the health or safety of others; this determination cannot be based on generalizations or stereotypes about the effects of a disability).

<sup>21</sup> 55 PA. CODE § 4226.3.

<sup>22</sup> *Id.* § 4226.24(g)(2).

<sup>23</sup> 22 PA. CODE § 14.101.

<sup>24</sup> *Id.* § 14.153(4)(i).

<sup>25</sup> *Id.* § 14.101.

<sup>26</sup> *Id.* § 14.153(4)(i).

<sup>27</sup> *A Family’s Introduction to Early Intervention in Pennsylvania*, Pennsylvania Office of Child Development and Early Learning (April 2021), [https://www.pattan.net/CMSPages/GetAmazonFile.aspx?path=-\pattan\media\materials\publications\images\ei-family-guide-4c-jan2021\\_out-web.pdf&hash=658fe995bd3933d14d823d3480477ae0d43a46c286b5ae239faabf13426d43bc&ext=.pdf](https://www.pattan.net/CMSPages/GetAmazonFile.aspx?path=-\pattan\media\materials\publications\images\ei-family-guide-4c-jan2021_out-web.pdf&hash=658fe995bd3933d14d823d3480477ae0d43a46c286b5ae239faabf13426d43bc&ext=.pdf).

<sup>28</sup> *Overview of Early Intervention*, Center for Parent Information & Resources (2021), <https://www.parentcenterhub.org/ei-overview/>.

<sup>29</sup> 55 PA. CODE § 4226.97.

<sup>30</sup> See *ODR IEP/IFSP Facilitation Fact Sheet*, <https://odr-pa.org/facilitation/iep-ifsp-facilitation/>.

<sup>31</sup> 34 C.F.R. § 300.506.

<sup>32</sup> *Id.* § 300.511.

<sup>33</sup> 34 C.F.R. § 300.153(c).

<sup>34</sup> *Id.* § 300.152.

<sup>35</sup> 55 PA. CODE § 4226.95(b)(4).