

PREVENTING SUSPENSION AND EXPULSION IN PRESCHOOL SETTINGS

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This fact sheet applies to young children in all preschool settings in Pennsylvania, including child care and daycare centers, Early Intervention, Head Start, private academic schools (PDE-licensed preschools), and school district pre-kindergarten. If one of these school settings seeks to suspend or expel your child, here are some things you should know about your rights. For more detailed information regarding your child's right to early learning, see ELC's [*A Family Guide to Inclusive Early Childhood Learning in Pennsylvania.*](#)

WHY ARE SUSPENSION AND EXPULSION PARTICULARLY PROBLEMATIC IN PRESCHOOL?

Suspension and expulsion occur at high rates in preschool and are associated with negative educational and life outcomes.¹ They do nothing to teach appropriate behavior and deny children the opportunity to access the benefits of early childhood programs. They also have a disproportionate impact on Black children and children with disabilities.²

Because of this, Pennsylvania's Office of Child Development and Early Learning (OCDEL) has said that: 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.³ Beginning in 2017, Pennsylvania early learning programs were required to develop program-specific policies to prevent, reduce, and ultimately eliminate suspension and expulsion of young children from their programs.⁴

WHAT IS A PRESCHOOL SETTING?

Child Care/Daycare (Ages 0-5): Available in family child-care homes, group child-care homes, and child care centers.

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

Head Start (Ages 0-5): Promotes the school readiness of infants, toddlers, and preschool-aged 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 PA Department of Education to serve children and staffed by qualified teachers and other professionals.

School District Pre-Kindergarten (Ages 3 & 4): Preschool program administered by many school districts to prepare children for kindergarten.

WHAT IS SUSPENSION AND EXPULSION IN PRESCHOOL?

Suspension is when a child is removed from a classroom as a consequence of a child's inappropriate behavior for a specified period of time.⁵ Examples include:

- excluding a child from the classroom by placing him outside the classroom or in another part of the building;
- sending a child home early or limiting the hours per day she can attend;
- preventing a child from attending because his one-to-one aide is sick.

Expulsion is the permanent removal of a child from an early childhood program because of inappropriate behavior or challenging health conditions.⁶ Examples include:

- advising a parent that they must find new child care because their child is a “safety risk”;
- un-enrolling 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.⁷ In schools, teachers and staff should seek to:

- create positive climates and focus on prevention;
- 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;
- 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 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 section below entitled “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](#): These centers provide 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 as well as 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 PA Family Center near you, call the Office of Child Development and Early Learning (OCDEL) at 717-346-9320.

[Family Check-Up](#) for families with young children: This program is designed to help parents address challenges that arise with young children before these concerns become more serious or problematic. It involves three visits with a family coach, and then families can choose from a menu of service options including family-based 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): P2P links families of children with disabilities or special needs 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): This is a leadership training program for parents of children in early intervention, providing up-to-date information on best practices, resources, and policy issues.

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)** prohibits discrimination against children with qualifying disabilities in preschool or daycare settings including as applied to enrollment, equal access, program administration, and discipline. Children with qualifying disabilities include:

- children who receive early intervention services;
- children with mental or physical conditions that substantially limit major life activities (including thinking, walking, seeing, making friends, talking, etc.).

Parents may request a “reasonable modification” or accommodation to ensure that a child with a qualifying disability can access a program. 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 its programs and benefits.⁸

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.⁹ 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](#).

WHAT IS EARLY INTERVENTION (EI)?

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. The program provides services to help children grow and gain skills so that they are ready for school with their peers. There are two programs based on age: Infant and Toddler Early Intervention (Infant Toddler EI) for ages 0-3 and Preschool Early Intervention (Preschool EI). 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.¹⁰ Once you agree to the evaluation, it must be finished in 45 calendar days.¹¹
- 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.¹² Once you agree to the evaluation, it must be finished in 60 calendar days.¹³ 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 \(IU\)](#) and ask for an evaluation.¹⁴ Once you agree to the evaluation, it must be finished in 60 calendar days.¹⁵ 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 help 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:¹⁶

- a statement of your child's 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;
- 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:¹⁷

- 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
- psychological services.

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

You have several options if you disagree with a decision made by your county or Intermediate Unit about the EI services for your child. 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.¹⁸
- **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.¹⁹
- **Mediation** – A trained mediator will try to help your family and the agency resolve the disagreement without the need for a formal hearing.²⁰
- **Impartial 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.²¹

For more information on IEP facilitation, mediation, or an impartial 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.²² To file a 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-ocintervention@state.pa.us. To use this complaint system, a violation must have occurred within the year prior to your submitting the complaint.²³ The Bureau will then investigate and send you a report within 60 days.²⁴ If the investigation finds problems, the state will require the county or IU to fix the problem.

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 or call 215-238-6970 (Eastern and Central PA) or 412-258-2120 (Western PA) – or contact another attorney of your choice.

¹ Dolores A. Stegelin, *Preschool Suspension and Expulsion: Defining the Issues*, Institute for Child Success (Dec. 2018).

² Black preschool children are 3.6 times as likely to receive one or more out-of-school suspensions as white preschool children. Children with disabilities and emotional challenges are 14.5 times as likely to be suspended or expelled as typically developing peers. U.S. Department of Education, Office for Civil Rights, *Key Data Highlights on Equity and Opportunity Gaps in Our Nation's Public Schools* (2014); Cristina Novoa & Rasheed Malik, *Suspensions Are Not Support: The Disciplining of Preschoolers with Disabilities*, Center for American Progress (2018).

³ Developing Suspension and Expulsion Policies, Pennsylvania Office of Child Development (2020), at <https://s35729.pcdn.co/wp-content/uploads/2020/08/Developing-Suspension-Expulsion-Policies-7-16-2020.pdf>.

⁴ Reduction of Expulsion and Suspension in Early Childhood Programs in Pennsylvania (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>.

⁵ Developing Suspension and Expulsion Policies, Pennsylvania Office of Child Development and Early Learning (2020), at <https://s35729.pcdn.co/wp-content/uploads/2020/08/Developing-Suspension-Expulsion-Policies-7-16-2020.pdf>.

⁶ Developing Suspension and Expulsion Policies, Pennsylvania Office of Child Development and Early Learning (2020), at <https://s35729.pcdn.co/wp-content/uploads/2020/08/Developing-Suspension-Expulsion-Policies-7-16-2020.pdf>.

⁷ Guiding Principles: A Resource Guide for Improving School Climate and Discipline, U.S. Department of Education (2014), at <https://www2.ed.gov/policy/gen/guid/school-discipline/guiding-principles.pdf>.

⁸ 28 CFR § 36.303. Unless it is an undue burden or requires a fundamental alteration of the program.

⁹ 28 CFR § 36.302; 28 CFR § 36.208. A direct threat is a substantial risk of serious harm to the health or safety or others. This determination cannot be based on generalizations or stereotypes about the effects of a disability.

¹⁰ 55 Pa. Code § 4226.3.

¹¹ 55 Pa. Code § 4226.24(g)(2).

¹² 22 Pa. Code § 14.101.

¹³ 22 Pa. Code § 14.153(4)(ii).

¹⁴ 22 Pa. Code § 14.101.

¹⁵ 22 Pa. Code § 14.153(4)(ii).

¹⁶ A Family's Introduction to Early Intervention in Pennsylvania, Pennsylvania Office of Child Development and Early Learning (April 2021).

¹⁷ Overview of Early Intervention, Center for Parent Information & Resources, <https://www.parentcenterhub.org/ei-overview/> (2021).

¹⁸ 55 Pa. Code § 4226.97(a).

¹⁹ See ODR IEP/IFSP Facilitation Fact Sheet, <https://odr-pa.org/facilitation/iep-ifsp-facilitation/>.

²⁰ 34 C.F.R. § 300.506.

²¹ 34 C.F.R. § 300.511.

²² 55 Pa code § 4226.95(b)(4).

²³ 34 C.F.R. § 300.151.

²⁴ 34 C.F.R. § 300.153(c).