

ENSURING ACCESS TO INCLUSIVE EARLY CHILDHOOD EDUCATION SETTINGS

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Early childhood education (ECE), including preschool, childcare, and other settings where children learn foundational skills, is critical for a child's academic and social development.¹ Under the Individuals with Disabilities Education Act (IDEA), young children with disabilities or developmental delays have the right to receive a free appropriate public education (FAPE) and must be educated with their typically developing peers to the maximum extent appropriate.² Research shows, however, that early childhood education programs are disproportionately excluding, or "pushing out," young children with disabilities in violation of their educational rights and often causing lifelong harm.³ In addition, due to systemic racism and individual racial bias, early education programs are also excluding young learners who are Black and Brown at far higher rates than their white peers, often in violation of their civil rights and causing similar long term harm.⁴

This fact sheet provides information about how to advocate to ensure that young children can access high-quality, inclusive ECE with their peers – and make progress free from discrimination.

WHY IS "INCLUSIVE" EARLY CHILDHOOD EDUCATION IMPORTANT?

Access to high-quality ECE is associated with increased school readiness,⁵ higher graduation rates,⁶ higher employment rates,⁷ increased financial independence,⁸ and even longer lifespans.⁹ Inclusive classrooms are those in which all children learn together, regardless of differences in how they learn. This allows children with developmental delays or disabilities to learn alongside peers without disabilities, which can lead to positive outcomes for children with disabilities and their non-disabled peers.

For young children with disabilities, being educated in inclusive classrooms is associated with stronger language and social skill development,¹⁰ stronger performances in reading and math,¹¹ and better generalizing of the skills they learn.¹² Additionally, research shows that children with disabilities experience increased feelings of belonging, better classroom engagement, and lower instances of challenging behaviors when they are educated in inclusive environments.¹³ Children without disabilities also benefit from learning in inclusive settings, because they gain skills in patience, helping others, and respecting those who are different from them.¹⁴ Studies also indicate that children without disabilities in inclusive environments make similar academic progress to children in non-inclusive settings.¹⁵ Overall, inclusive educational environments are important to development for children of all ages.

Although the benefits of high quality and inclusive ECE are clear, programs exclude children with disabilities at troublingly higher rates than their typically developing peers.²⁴ Studies show that preschools suspend and expel preschoolers with disabilities, largely for disability-related behaviors, at a rate 14.5 times higher than that of their peers without disabilities.²⁵ While children with disabilities served under IDEA make up only 23% of the preschool population, they constitute 41% of all preschool out-of-school suspensions and 74% of preschool expulsions.²⁶ Families report that preschools exclude their children based on their disability-related needs and behaviors related to their disabilities.²⁷

DOES MY CHILD HAVE A RIGHT TO INCLUSION AT THE EARLY CHILDHOOD/PRESCHOOL LEVEL?

Yes. Various federal and state laws give children with disabilities a right to access inclusive education, including at the preschool level.²⁸

Under the IDEA, young children with disabilities are entitled to a ‘free appropriate public education, also known as ‘FAPE,’ or an education that allows the child to make meaningful functional and academic progress in the least restrictive environment (LRE) from age 3 until the end of high school.²⁹ The determination of FAPE for each child must be individually tailored and not based on convenience for the local education agency (in Philadelphia County, it’s Elwyn; in other counties, Intermediate Units).³⁰ The least restrictive environment means that children with disabilities should be educated alongside their non-disabled peers to the maximum extent appropriate.³¹ Preschool-aged children are entitled to FAPE in the least restrictive environment through Early Intervention.³²

Accordingly, before placing a child into a more restrictive placement away from their non-disabled peers (such as a classroom or school only for children with disabilities), local educational agencies

THE IMPACT OF RACIAL DISCRIMINATION IN PRESCHOOL EXCLUSION

Due to systemic racism and anti-Black racial bias, ECE settings commonly exclude Black and Brown children at staggering rates.¹⁶ Although we do not have data with regard to many private early childhood settings, research studies consistently show that public preschools disproportionately exclude Black and Brown children.¹⁷ Federally reported data reflects this trend. For example, during the 2013-14 school year, preschools chose to exclude Black children through suspensions and expulsions at a rate 3.6 times higher than that imposed on their white peers for similar behaviors, and at three times the rate of K-12 exclusion.¹⁸ For the 2020-21 school year (during COVID), preschools excluded Black children through suspensions at a rate twice as high as that imposed on their white peers for similar behaviors.¹⁹ Although Black children accounted for 17% of preschool enrollment, they represented 31% of children who received suspensions and 25% of those expelled in the 2020-21 school year alone.²⁰

These disparities exist not because Black preschoolers are more likely to behave poorly, but because of systemic and structural racism, such as lack of access to early intervention services for Black and Brown children²¹ and the racial biases of adult decision makers who perceive the behavior of Black children as more problematic than the same behavior in white children. One study found that childcare providers documented the behavior of Black children more frequently compared to white children, even though there were no actual differences in the observed disruptive behavior displayed by the children.²² Another study, using eye-tracking technology, found that teachers were more likely to surveil a Black boy in preschool compared to a Black girl, white boy, or White girl, indicating that preschools disproportionately subject Black children’s behavior to higher scrutiny and levels of monitoring.²³

(LEAs) must consider what aids and services might allow the child to be successful in an inclusive classroom, and then actually provide those supports before removing the child from an inclusive environment. This could mean increased occupational therapy or specialized instruction services, consultation services to train preschool teachers in supporting your child's needs, behavior support services, a behavioral evaluation and positive behavior support plan, one-to-one services, or other services that may be necessary for your child to be included in general education. Courts have held that where a preschool-aged child could academically succeed in an inclusive setting with supplementary supports, but the LEA did not provide such supports, the child was deprived of a FAPE in the LRE.³³

Preschools must also comply with Title III of the Americans with Disabilities Act (ADA), which prohibits discrimination based on disability in all “public accommodations,” including ECE settings.³⁴ The Pennsylvania Human Relations Act (PHRA), the state's anti-discrimination law, also prohibits disability-based discrimination in public accommodations, defined as “any accommodation ... which is open to ... the general public, including but not limited to ... kindergartens, primary and secondary schools, high schools ... all educational institutions under the supervision of this Commonwealth.”³⁵ Under the ADA and PHRA – which most preschools must comply with as places of public accommodation – educational institutions must make reasonable accommodations for children. This obligation extends to private preschool programs and programs through Head Start, PHLpreK,³⁶ Pre-K Counts,³⁷ school districts, and EI, among others.

HOW CAN I ADVOCATE FOR MY CHILD TO PARTICIPATE IN AN INCLUSIVE PRESCHOOL?

You can advocate for your child to be supported and educated in an inclusive early childhood educational setting in various ways. For example, you can ask for special education services at an Individual Education Program (IEP) meeting, which can be requested at any time and would support your child to be educated in a regular preschool classroom. If your child is being excluded from preschool or receiving fewer hours of education and you believe your child may have disabilities, you can ask that your child be evaluated to determine if they need special education services, which must be provided in the least restrictive environment.

WHAT IS EARLY INTERVENTION?

Early Intervention (EI) is a free program that provides educational services to children aged 0-5 with developmental delays or disabilities.³⁸ These services can include speech therapy, one-to-one services, occupational therapy, behavior therapy, or other services based on your child's needs.³⁹ EI can help your child develop necessary skills earlier, allowing them to better communicate, interact with others, and learn.⁴⁰ To find out more about EI, visit ELC-PA's fact sheets on [Early Intervention: Questions & Answers](#) and [Early Intervention Step-by-Step Guide & Timelines](#).

WHAT KINDS OF SERVICES SHOULD I ADVOCATE FOR TO SUPPORT MY CHILD TO PARTICIPATE IN AN INCLUSIVE PRESCHOOL?

If your child is being excluded from preschool, told that a particular ECE placement is “not a good fit,” or receiving reduced hours of education and your child has not been evaluated for special

education services, you should consider whether your child should be evaluated. See ELC-PA's fact sheet on [Special Education Evaluations](#). If your child has an IEP and does not attend an inclusive program and you think they would benefit from inclusion and could be successful in an inclusive classroom, you can **request an IEP Team meeting** to discuss opportunities for inclusion to allow your child to interact with typically developing peers during the preschool day. You can also request additional services and supports your child may need in the classroom. These supports may include, but are not limited to:

- **Staff training:** Consider what training the program staff may need to provide necessary services for your child.
 - Example: If your child experiences disability-related challenging behaviors, such as persistent or long-lasting tantrums, EI LEAs (Elwyn or your IU) can evaluate the root causes of the challenging behavior and provide consultation services to teachers, including training on how to identify the triggers for tantrums, how to manage those triggers in the classroom, and how to respond appropriately.
 - You can request “consultation services” from your child’s IEP team, including in speech, occupational therapy, behavior support, or something else.
- **Assistive technology:** Think about any assistive technology that your child should have access to during their day at preschool.
 - “Assistive technology” in education refers to any software or device that helps students with disabilities learn and perform daily-living tasks. Depending on your child’s needs, they may benefit from having assistive technology.
 - Example: If your child struggles with speech, an augmentative and alternative communication (AAC) device can generate speech for them, which could benefit their learning and classroom experience.
 - You can discuss assistive technology with your child’s IEP team.
- **Communication plan:** Discuss processes and plans for communication between you and the IEP team, as well as how the preschool will be included in communication and will participate in IEP meetings. These processes should then be integrated into your child’s IEP.
 - Example: The IEP team should be providing progress updates to you, and you could also request a home and school communication log (such as through email or a student portal) so that you receive regular updates on what your child is doing in preschool. Incorporating a communication plan into your child’s IEP ensures that you are up-to-date on your child’s experience at school and that you, the LEA, and preschool are aligned regarding the kind of support your child needs.
- **Increased or targeted services:** Consider what areas your child may need additional goals in to support their inclusion (such as goals concerning peer interactions, expressing their needs, or self-regulation). In addition, consider whether additional services or increased service time could support their participation.

WHAT CAN I DO IF MY CHILD REQUIRES EARLY INTERVENTION SERVICES, AND THEIR EI AGENCY/PROVIDER IS NOT SUPPORTING THEM TO BE EDUCATED IN THE LEAST RESTRICTIVE ENVIRONMENT?

You can request an IEP meeting. This will give you an opportunity to explain that you believe your child can be successful in a more inclusive learning environment if they are given the proper support. Voice any concerns you have – including concerns about challenging behaviors. You can make sure that the LEA has invited the preschool teachers to attend the IEP meeting to explain their concerns, as well. If you want the LEA to share information with your preschool about your child's EI services, you must provide your consent by completing a [Bureau of Early Intervention Release Authorization](#) or similar form. You can also request that the preschool provide the LEA with any data they have about your child's needs, behavior, and progress. You may be asked to sign a consent form to permit your preschool to share information concerning your child with the LEA.⁴¹

At the IEP meeting, consider advocating for:

- A Functional Behavior Assessment (FBA) if your child is experiencing behaviors that are getting in the way of their learning.
- A Sensory Assessment if your child has sensory needs that are impacting learning (note: sometimes these can look like challenging behaviors in the preschool setting).
- New or increased speech services to address communication concerns.
- New or increased occupational therapy to address fine motor, self-regulation, or sensory needs.
- A Positive Behavior Support Plan (PBSP) to teach appropriate behaviors and to support your child's development.
- New or additional goals focused on challenging behaviors, peer interactions, or another need.
- Training and support from the Early Intervention LEA for the preschool staff about how to support your child's needs.
- One-to-one adult support either for targeted times during the preschool day or for the full day.

WHAT CAN I DO IF MY CHILD'S LEA DOES NOT PROVIDE THE APPROPRIATE PLACEMENT OR SERVICES NEEDED TO EDUCATE MY CHILD IN THE LEAST RESTRICTIVE ENVIRONMENT?

You have several options to challenge any decisions that you disagree with. You may consider requesting mediation as a means to resolve a disagreement about your child's EI program, including placement or inclusion opportunities.⁴² These meetings can be quick and effective, and they are free.⁴³ If you would like to request a mediation between you and the EI LEA, fill out [this form](#) or call the Office for Dispute Resolution (ODR) at 1-800-222-3353.⁴⁴ Discussions that occur at mediation meetings are confidential.⁴⁵ Furthermore, mediation agreements are legally enforceable, meaning the LEA must follow them.⁴⁶

You can also request a due-process hearing if you believe the services that the LEA is providing your child are not appropriate, if you disagree with a proposed placement, or if you disagree with the LEA's conclusion that your child is not eligible for services, among other concerns. If you believe your child is not being educated in the LRE but could be successful with appropriate services or with services that are not being provided, you can request a due process hearing and attempt to resolve the dispute that way.⁴⁷ You must request a due process hearing within two years of the date that you knew or should have known about the issue your child is/was experiencing.⁴⁸

To request a due process hearing, you can either fill out [this form](#) or write a letter with (1) your child's name, school, and home address (or contact information if you are experiencing homelessness), (2) an explanation of the problem your child is experiencing, and (3) your suggestions for solving the problem.⁴⁹ This form or letter should be sent to your LEA and the Office for Dispute Resolution either by email at ODR@odr-pa.org or by mailing the form to the Pennsylvania Office for Dispute Resolution at 6340 Flank Drive, Harrisburg, PA 17112.⁵⁰ Within 15 days of the LEA receiving the complaint, the LEA must hold a resolution session. If an agreement is not reached at this stage, the case will then be heard by a hearing officer.⁵¹ The hearing officer's decision must be released within 45 days.⁵² If you do not agree with the hearing officer's decision, you have 90 days to file an appeal in federal court or 30 days to file an appeal in state court. You have the right to bring a lawyer, call witnesses, and show evidence at a due process hearing.⁵³

You may also consider filing a complaint with the Bureau of Early Intervention Services and Family Supports (BEISFS), which may also be able to help resolve your issue before you write a formal complaint and can be contacted at 717-346-9320.⁵⁴ To file a formal complaint with BEISFS, fill out this [complaint form](#) and either (1) email it to ra-ocdintervention@pa.gov, (2) fax it to 717-346-9330, or (3) mail it to:

Departments of Education and Human Services
Office of Child Development and Early Learning
Bureau of Early Intervention Services and Family Supports
607 South Drive, 4th Floor Rotunda
Harrisburg, PA 17120⁵⁵

For more information on filing BEISFS complaints, visit the state's announcement on [Early Intervention Complaint Procedures](#).

For more information on dispute resolution in special education, view ELC-PA's fact sheet on [Resolving Special Education Disagreements](#).

WHAT CAN I DO IF THE PRESCHOOL IS NOT ADEQUATELY ACCOMMODATING MY CHILD'S DISABILITY?

Although the EI LEA is responsible for ensuring your child has the EI services that they need to be successful in the LRE and implementing your child's IEP, your child's preschool program has a responsibility not to discriminate against your child based on disability.⁵⁶ ECE programs cannot

deny enrollment to children based on disability or exclude them through informal or formal suspensions or expulsions, and they must make reasonable accommodations to ensure your child can be included.⁵⁷

Under the ADA and PHRA, preschools must at least attempt to reasonably accommodate a student with disabilities.⁵⁸ You can request a reasonable “modification” or accommodation by simply asking your child’s preschool for it.⁵⁹ Preschools are required to implement these accommodations unless the requests impose an undue burden or require a fundamental change of the preschool program.⁶⁰

Some reasonable accommodations or modifications may include:

- **Environmental or physical modifications**, such as providing sensory materials, a calming space for the child, or adaptive seating.
- **Providing additional support** during down time, playtime, or transitions.
- **Communication accommodations**, such as using visual schedules (picture charts).
- **Instructional modifications**, such as simplifying directions, chunking activities into smaller steps, or modifying how a child demonstrates what they have learned.
- **Behavioral accommodations**, such as changing discipline policies to ensure that children have equal access to the program, including training staff to address challenging behaviors.⁶¹

Under the ADA and PHRA, preschools cannot exclude children based on their disabilities or disability-related behaviors unless the child poses a direct threat to the health or safety of others⁶² or providing the necessary care would fundamentally alter⁶³ the nature of the program.⁶⁴

WHAT CAN I DO IF MY CHILD IS BEING DISCRIMINATED AGAINST OR EXCLUDED FROM THEIR ECE PROGRAM BECAUSE OF THEIR DISABILITY?

As previously mentioned, the ADA and PHRA prohibit discrimination on the basis of disability.⁶⁵ If you suspect your child is being discriminated against or pushed out of their ECE program due to their disability, you can file a complaint with the Pennsylvania Human Relations Commission (PHRC).⁶⁶

The PHRC is a state agency whose purpose is to enforce the PHRA.⁶⁷ This commission investigates complaints and can direct schools, including ECE settings, to take corrective action to remedy instances of discrimination.⁶⁸ To file a complaint to the PHRC, call the agency at 717-787-4410 or complete their [Education Discrimination Form](#) and email it to PHRC@pa.gov or mail it to your local PHRC regional office.⁶⁹ The school will be notified that a PHRA complaint was filed against them and, if an investigation ensues, will be given an opportunity to respond. If the PHRC finds sufficient evidence of discrimination, it will attempt to resolve your issue with the school or hold a public hearing on the case that will result in a legally enforceable decision.⁷⁰

For a step-by-step guide on how to file a PHRA complaint, please visit ELC-PA’s fact sheet on [How to File a Discrimination Complaint to the Pennsylvania Human Relations Commission](#).

You may also file a complaint with the Pennsylvania Department of Human Services (DHS) raising concerns about the preschool's discriminatory conduct as a violation of its obligations as a licensed childcare center. Private preschool programs in Pennsylvania that serve children in a group setting are typically required to be licensed as a childcare center by DHS and must comply with specific requirements prohibiting discrimination.⁷¹ You may initiate a licensing complaint by contacting the appropriate [DHS Regional Child Development Office](#), which is assigned responsibility for investigating complaints about childcare centers that do not follow the regulatory requirements for operating a facility.

Finally, you may also consider filing a complaint with the U.S. Department of Justice's Civil Rights Division, the agency that enforces the ADA. You can file the complaint using [their online form](#) or by mailing the [paper complaint form](#) to:

U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, NW
Washington, DC 20530⁷²

If you do not hear back from the DOJ within three months of filing your complaint, call their ADA helpline at 800-514-0301.⁷³

For more options on where to file a discrimination complaint, visit ELC-PA's fact sheet on [Your Child's Right to be Free from Discrimination in Preschool](#).

If you have additional questions about early intervention, visit our fact sheet on [Early Intervention: Questions & Answers](#).

The Education Law Center-PA (ELC-PA) 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-PA 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+ youth, children experiencing homelessness, and children at the intersection of multiple underserved identities.

ELC-PA'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-PA'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 See Hehir et al., *A Summary of the Evidence on Inclusive Education*, Instituto Alana (Aug. 2016) (global studies on the benefits of inclusion) https://alana.org.br/wp-content/uploads/2016/12/A_Summary_of_the_evidence_on_inclusive_education.pdf.

² 20 U.S.C. § 1412.

- ³ Education Law Center-PA, *Ending Preschool Pushout in Pennsylvania: Parent Testimonies and a Path Forward* (April 2026); Zinsser, Katherine M., et al. *A Systematic Review of Early Childhood Exclusionary Discipline*, 92 REV. EDUC. RES. 691 (2022).
- ⁴ Songtian Zeng et al., *Adverse childhood experiences and preschool suspension expulsion: A population study*, 97 CHILD ABUSE & NEGLECT 104149 (2019) (“Black children account for almost 50% of public preschool suspensions but less than one-fifth of all preschoolers.”), <https://www.sciencedirect.com/science/article/abs/pii/S0145213419303266?via%3Dihub>; Terri Sabol et al., *A window into racial and socioeconomic status disparities in preschool disciplinary action using developmental methodology*, ANNALS N.Y. ACAD. SCI. (Sept. 2021), <https://nyaspubs.onlinelibrary.wiley.com/doi/epdf/10.1111/nyas.14687>.
- ⁵ See generally Meloy et al., *Untangling the evidence on preschool effectiveness: Insights for policymakers*, Learning Policy Institute (Jan. 2019).
- ⁶ Dana Charles McCoy et al., *Impacts of Early Childhood on Medium- and Long-Term Educational Outcomes*, 46 EDUC. RESEARCHER 474 (Nov. 15, 2017), <https://psycnet.apa.org/record/2017-52000-005>.
- ⁷ THE UNIV. OF CHICAGO, CTR. FOR THE ECON. OF HUMAN DEVELOPMENT, Perry Preschool Project, https://cehd.uchicago.edu/?page_id=958.
- ⁸ Arthur J. Reynolds et al., *Reducing Poverty and Inequality Through Preschool-to-Third-Grade Prevention Services*, 74 AM. PSYCHOL. 653 (2019), <https://pubmed.ncbi.nlm.nih.gov/31545639/>.
- ⁹ Ismaila Ramon et al., *Early Childhood Education to Promote Health Equity: A Community Guide Economic Review*, 24 J. PUB. HEALTH MGMT. & PRAC. e8, e8-e15 (2018).
- ¹⁰ Rafferty et al., *The impact of inclusion on language development and social competence among preschoolers with disabilities*, EXCEPTIONAL CHILDREN (2003).
- ¹¹ Cole et al., *The Relationship Between Special Education Placement and High School Outcomes*, J. SPECIAL EDUC. (2022).
- ¹² Lynn K. Koegel et al., *Improving Generalization of Peer Socialization Gains in Inclusive School Settings using Initiations Training*, BEHAVIOR MODIFICATION (Sept. 2013) <https://pmc.ncbi.nlm.nih.gov/articles/PMC3761387/>.
- ¹³ See generally Hehir et al., *A Summary of the Evidence on Inclusive Education*, Instituto Alana (Aug. 2016) https://alana.org.br/wp-content/uploads/2016/12/A_Summary_of_the_evidence_on_inclusive_education.pdf.
- ¹⁴ Silvia Molina Roldán et al., *How Inclusive Interactive Learning Environments Benefit Students Without Special Needs*, FRONTIERS PSYCH. (2021).
- ¹⁵ Ayse Kart and Mehmet Kart, *Academic and Social Effects of Inclusion on Students without Disabilities: A Review of the Literature*, EDUC. STUD. (2020).
- ¹⁶ See generally Saili S. Kulkarni et al., *Playing Together: A Call for Multiple Stakeholders to Reduce Exclusionary and Harsh Discipline for Young BICOC with Disabilities*, 6 PERSPS. ON EARLY CHILDHOOD PSYCH. & EDUC. 251 (Nov. 2022), <https://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1008&context=perspectives>; Sarah C. Wymer et al., *Exclusionary Discipline Practices in Early Childhood*, YOUNG CHILDREN (Jul. 2020), <https://www.naeyc.org/resources/pubs/yc/jul2020/exclusionary-discipline-practices-early-childhood>.
- ¹⁷ 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>.
- ¹⁸ U.S. Department of Education Office for Civil Rights, *2013-2014 Civil Rights Data Collection* (2016) <https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/2013-14-first-look.pdf>. 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).
- ¹⁹ U.S. Dept. of Education Office for Civil Rights 2020-21 Civil Rights Data Collection, *Student Discipline and School Climate in U.S. Public Schools* (Nov. 2023) <https://www.ed.gov/media/document/crdc-discipline-school-climate-reportpdf-21409.pdf>. See also 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>.
- ²⁰ U.S. Dept. of Education Office for Civil Rights 2020-21 Civil Rights Data Collection, *Student Discipline and School Climate in U.S. Public Schools*.
- ²¹ 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.

- ²² 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>.
- ²³ Gilliam et al., *Do early educators' implicit biases regarding sex and race relate to behavior expectations and recommendations of preschool expulsions and suspensions?*, Yale University Child Study Center (Sep. 28, 2016), <https://marylandfamiliesengage.org/wp-content/uploads/2019/07/Preschool-Implicit-Bias-Policy-Brief.pdf>.
- ²⁴ Dinke Aga Hirpa, *Exclusion of children with disabilities from early childhood education: Including approaches of social exclusion*, COGENT EDUC. (2021).
- ²⁵ Cristina Novoa & Rasheed Malik, Center for American Progress, *SUSPENSIONS ARE NOT SUPPORT: THE DISCIPLINING OF PRESCHOOLERS WITH DISABILITIES* (2018).
- ²⁶ Office for Civil Rights, U.S. Department of Education, *2021-22 Civil Rights Data Collection, A First Look: Students' Access to Educational Opportunities in U.S. Public Schools* (Jan. 2025).
- ²⁷ See Education Law Center-PA, *Ending Preschool Pushout in Pennsylvania: Parent Testimonies and a Path Forward* (April 2026). https://www.elc-pa.org/wp-content/uploads/2026/04/ELCPA_PreKPushout_April2026_FINAL.pdf; O'Grady et al., *"We Don't Serve Kids Like Yours": Mapping the Exclusion of Young Children With Disabilities*, Panel session presented at the 2026 CRIEI Conference, San Diego, CA.
- ²⁸ 20 U.S.C § 1412; 42 U.S.C § 12182(a); 43 Pa. Stat. §§ 953.
- ²⁹ 20 U.S.C § 1412.
- ³⁰ See *Andrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 401 (2017) (It is through the IEP that "[t]he 'free appropriate public education' required by the Act is tailored to the unique needs of" a particular child.").
- ³¹ 20 U.S.C § 1412(a)(5)(A).
- ³² 20 U.S.C § 1401(9)(c).
- ³³ *L.B. ex rel. K.B. v. Nebo Sch. Dist.*, 379 F.3d 966, 977-79 (10th Cir. 2004) (finding that a preschooler who was placed in a special education environment despite demonstrating success with the help of an aide was not placed in the least restrictive environment).
- ³⁴ 42 U.S.C § 12182(a).
- ³⁵ 43 Pa. Stat. §§ 953-54.
- ³⁶ The PHL preK program provides preschool services to children ages 3-4 who reside in Philadelphia County. Find more information at <https://www.phlprek.org/>. To apply for this program, go to <https://www.phlprek.org/application-2/>.
- ³⁷ Pre-K Counts is a program that provides half-day and full-day preschool programs to children ages 3-5 across Pennsylvania. To be eligible to receive Pre-K Counts funding, a family's total annual family income must be less than 300% of the Federal Poverty Guidelines. Learn more at <https://www.phlprek.org/pre-k-counts>.
- ³⁸ CDC, *Early Intervention*, Centers for Disease Control (Feb. 16, 2026). <https://www.cdc.gov/act-early/early-intervention/index.html>.
- ³⁹ *Id.*
- ⁴⁰ *Id.*
- ⁴¹ 20 U.S.C § 1232g(a)(3) (FERPA obligation to protect student records and/or share them with parents on request does not apply to some private schools who do not receive federal funding).
- ⁴² 34 C.F.R. 300.506(a).
- ⁴³ *Id.* 300.506(b)(4).
- ⁴⁴ The Off. for Disp. Resol., *Your Guide to Special Education Mediation*, PA. DEP'T OF EDUC https://odr-pa.org/wp-content/uploads/Mediation_Guide_English.pdf.
- ⁴⁵ 34 C.F.R. 300.506(b)(8).
- ⁴⁶ *Id.* 300.506(b)(7).
- ⁴⁷ 20 U.S.C. 1415(b)(6)(A).
- ⁴⁸ *Id.* 1415(b)(6)(B).
- ⁴⁹ 20 U.S.C. 1415(b)(7)(A)(ii).
- ⁵⁰ The Off. For Disp. Resol., *Family Resource Library - Due Process*, PA. DEP'T OF EDUC. (2025), <https://odr-pa.org/parent-resources/parent-resource-library/due-process/>.
- ⁵¹ 34 C.F.R. 300.511(c).
- ⁵² 22 PA. CODE 14.162(q)(2).
- ⁵³ 34 C.F.R. 300.512(a)(1)-(2).
- ⁵⁴ See Commonwealth of Pennsylvania, *Problem Solving in Early Intervention*. <https://www.pa.gov/agencies/education/programs-and-services/instruction/early-learning/early-intervention/problem-solving-ei>.

⁵⁵ *Id.*

⁵⁶ See Title II of the Americans with Disabilities Act 42 U.S.C. § 12132 (2025); Pennsylvania Human Relations Act, 43 Pa. Stat. Ann. § 953 et. Seq.

⁵⁷ 42 U.S.C § 12182(a); 43 Pa. Stat. §§ 953.

⁵⁸ See 42 U.S.C § 12182(b)(2)(A)(ii); 43 Pa. Stat. §§ 955(h)(3.2).

⁵⁹ 42 U.S.C § 12182(b)(2)(A)(ii); 43 Pa. Stat. §§ 955(h)(3.1).

⁶⁰ 28 C.F.R. § 36.303(a).

⁶¹ U.S. Department of Justice Civil Rights Division, *Equal Access to Child Care*, <https://www.ada.gov/topics/child-care-centers/>.

⁶² See, e.g., *Grosso v. UPMC*, 857 F. Supp. 2d 517, 537-38 and 544 (W.D. Pa. 2012) (medical perfusionist with medical conditions that caused her to occasionally pass out or become disoriented posed a “direct threat” to patients that could not be eliminated through reasonable accommodations by her hospital employer and therefore the hospital was not required to provide accommodations under the ADA and PHRA); *Contra Berardelli v. Allied Servs. Inst. of Rehab. Med.*, 900 F.3d 104, 124 (3d Cir. 2018) (parents’ request for their child to bring service dog to school was reasonable despite the school’s claims of a “direct threat” to a child having a dog allergy as the child was able and willing to take additional allergy medication).

⁶³ See, e.g., *Millington v. Temple Univ. Sch. of Dentistry*, 261 F. App’x 363, 367 n.5 (3d Cir. 2008) (dental student’s requested accommodations to limit clinical duty days, extend her junior year, and alter her use of important dental tools would have fundamentally altered the nature of the dental school program); *Contra Doe 1 v. Perkiomen Valley Sch. Dist.*, 585 F. Supp. 3d 668, 695 (E.D. Pa. 2022) (school mask requirements in response to the COVID-19 pandemic did not constitute a “fundamental alteration” to a school’s programming).

⁶⁴ 28 C.F.R § 36.208; 28 C.F.R. § 36.302.

⁶⁵ 42 U.S.C § 12182(a); 43 Pa. Stat. §§ 953.

⁶⁶ *Filing a Complaint*, PA. HUMAN RELATIONS COMM’N, <https://www.pa.gov/agencies/phrc/programs-and-services/file-a-complaint>.

⁶⁷ 43 Pa. Stat. Ann. § 954(l).

⁶⁸ *Filing a Complaint*, PA. HUMAN RELATIONS COMM’N, *supra* note 36.

⁶⁹ See *File an Education Discrimination Complaint*, PA. HUMAN RELATIONS COMM’N, <https://www.pa.gov/services/phrc/file-an-education-discrimination-complaint->.

⁷⁰ See *Filing a Complaint*, PA. HUMAN RELATIONS COMM’N, <https://www.pa.gov/services/phrc/file-an-education-discrimination-complaint->.

⁷¹ 55 Pa. Code § 3270.138 (prohibiting discrimination before, during, and after the admission process when serving a child with an illness); 55 Pa. Code § 3270.26 (compliance with nondiscrimination statutes)]; 55 Pa. Code § 3270.17(a) (requiring childcare centers to make reasonable accommodations to include a child with a disability); 55 Pa. Code § 3270.241 (relating to requirements specific to school-age programs). See 55 Pa. Code Chapter 3270 (Child Care Centers) & Chapter 3280.

⁷² See Civil Rights Division, *File a Complaint*, Department of Justice. <https://www.ada.gov/file-a-complaint/#filing-an-ada-complaint-with-the-department-of-justice-civil-rights-division>.

⁷³ *Id.*