

No. 1990-212

AN ACT

HB 1861

Providing for early intervention services for infants, toddlers and preschool children who qualify; establishing the Interagency Coordinating Council and providing for its powers and duties; and conferring powers and duties upon the Department of Education and the State Board of Education, the Department of Health and the Department of Public Welfare.

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The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

**CHAPTER 1
GENERAL PROVISIONS**

Section 101. Short title.

This act shall be known and may be cited as the Early Intervention Services System Act.

Section 102. Legislative findings for early intervention.

(a) Needs.—The General Assembly finds that there is a need to:

- (1) Increase the opportunity for the development of infants, toddlers and eligible young children who are handicapped in order to minimize their potential for developmental delay.

(2) Minimize the need for special education services as these infants, toddlers and eligible young children who are handicapped attain the age of beginners.

(3) Reduce the number of handicapped individuals being placed in institutions and enhance their potential for independent living in society.

(4) Assist the families of handicapped infants and toddlers to meet their children's special needs.

(5) Implement the provisions of Parts B and H in order to be eligible to receive Federal funding to help establish and maintain programs and services to assist handicapped infants, toddlers and their families and eligible young children.

(b) Remedy.—The General Assembly further finds that early intervention services for handicapped infants, toddlers and their families and eligible young children are cost effective and effectively serve the developmental needs of children who are handicapped.

Section 103. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Age of beginners.” The minimum age established by the school district board of directors for admission to the district's first grade under 22 Pa. Code § 11.15 (relating to admission of beginners).

“Council.” The Interagency Coordinating Council established in section 106.

“Early intervention services.” Developmental services which meet all of the following:

- (1) Are provided under public supervision.
- (2) Are designed to meet the developmental needs of a handicapped infant, toddler or eligible young child in any of the following areas:
 - (i) Physical development.
 - (ii) Cognitive development.
 - (iii) Sensory development.
 - (iv) Language and speech development or alternative communication development.
 - (v) Psycho-social development.
 - (vi) Self-help skills.
- (3) Are developed to meet the requirements of this act, including, but not limited to, the following:
 - (i) Family training.
 - (ii) Social work services, including counseling and home visits.
 - (iii) Special instruction.
 - (iv) Speech pathology and audiology.
 - (v) Occupational therapy.
 - (vi) Physical therapy.
 - (vii) Psychological services.
 - (viii) Medical services only for diagnostic or evaluation purposes.

- (ix) Early identification, screening and assessment services.
- (x) Health services necessary to enable the infant or toddler to benefit from the other early intervention services.
- (xi) Assistive technology devices and services.
- (xii) For handicapped infants and toddlers, other services required by Part H.

(4) Are provided by qualified personnel, including, but not limited to, special educators, speech and language pathologists and audiologists, occupational therapists, physical therapists, psychologists, social workers, nurses and nutritionists.

(5) Are provided in conformity with an individualized family service plan for eligible infants, toddlers and their families.

(6) Are provided to eligible young children in compliance with the provisions of this act and Part B. Compliance includes procedural safeguards and free appropriate public education, including related services and individualized education programs.

(7) Are provided in the least restrictive environment appropriate to the child's needs. Infants, toddlers and eligible young children who will be served in a non-home-based setting must, to the maximum extent consistent with the child's abilities, receive early intervention services in a setting with nonhandicapped children. Each infant's or toddler's IFSP and each eligible young child's IEP must contain the recommended service option placement and the rationale for why it represents the least restrictive environment.

"Education of the Handicapped Act." The Education of the Handicapped Act (Public Law 91-230, 20 U.S.C. § 1401 et seq.).

"Eligible young child." A child who is younger than the age of beginners and at least three years of age and who meets any of the following criteria:

(1) The child has any of the following physical or mental disabilities: autism/pervasive developmental disorder, serious emotional disturbance, neurological impairment, deafness/hearing impairment, specific learning disability, mental retardation, multihandicap, other health impairment, physical disability, speech impairment or blindness/visual impairment.

(2) The child is considered to have a developmental delay, as defined by regulations of the State Board of Education and the standards of the Department of Education.

"Handicapped infants and toddlers." Individuals ranging in age from birth to two years of age, inclusive, who need early intervention services for any of the following reasons:

(1) They are experiencing developmental delays, as defined by regulations of the Department of Public Welfare and as measured by appropriate diagnostic instruments and procedures in any of the following areas: cognitive development, sensory development, physical development, language and speech development, psycho-social development or self-help skills.

(2) They have a diagnosed physical or mental condition which has a high probability of resulting in developmental delay under paragraph (1).

This paragraph applies to conditions with known etiologies and developmental consequences. Examples of these conditions include Down syndrome; other chromosomal abnormalities; sensory impairments, including vision and hearing; inborn errors of metabolism; microcephaly; severe attachment disorders, including failure to thrive; seizure disorders; and fetal alcohol syndrome.

“IEP.” Individualized Education Program.

“IFSP.” Individualized Family Service Plan.

“Lead agency.” For early intervention services to eligible children from birth to two years of age, inclusive, the Department of Public Welfare; for early intervention services to eligible young children, the Department of Education.

“Local interagency agreement.” An agreement entered into by local agencies receiving early intervention funds directly from the Commonwealth and made under the State interagency agreement providing for the delivery of early intervention services within a specified geographic area.

“Mutually agreed-upon written arrangements.” An agreement between the Department of Education and intermediate units, school districts or other public or private agencies that comply with the early intervention regulations of the State Board of Education and early intervention standards of the Department of Education. These agreements may include memoranda of understanding pursuant to approved plans submitted to the Department of Education by intermediate units and school districts.

“Part B.” Part B of the Education for the Handicapped Act (20 U.S.C. § 1411 et seq.), as it applies to preschool children.

“Part H.” Part H of the Education for the Handicapped Act (20 U.S.C. § 1471 et seq.).

“State interagency agreement.” An agreement entered into by the Department of Education, the Department of Health, the Department of Public Welfare and any other Commonwealth agency for the purposes of this act and of Part B and Part H.

Section 104. State interagency agreement.

(a) Interagency agreement.—The Department of Education, the Department of Health and the Department of Public Welfare shall enter into and maintain a State interagency agreement to enable the State and local agencies serving infants, toddlers and eligible young children who are handicapped to establish working relationships that will increase the efficiency and effectiveness of their early intervention services. The agreement shall outline the responsibilities of those State and local agencies and shall implement a coordinated service delivery system through local interagency agreements.

(b) Components.—The State interagency agreement shall address, at a minimum, the following issues:

- (1) Responsibilities of State and local agencies.
- (2) Eligibility determination and referrals.
- (3) Establishment of local agreements.
- (4) Fiscal responsibilities of the agencies.

- (5) Dispute resolution between agencies.
- (6) Payor of last resort.
- (7) Maintenance of effort.
- (8) Administrative management structure.
- (9) Establishment and maintenance of local interagency coordinating councils, which shall include, but not be limited to, parents and private providers and which shall be authorized to advise and comment on the development of local interagency agreements for their specified geographic area and to communicate directly with the Department of Education, the Department of Health, the Department of Public Welfare and the council regarding the local interagency agreement and any other matters pertaining to this act.

(10) Plans by the Department of Health, the Department of Public Welfare and the Department of Education to work together to develop a coordinated system of case management.

(c) Goal.—Issues under subsection (b) shall be addressed to meet the requirements of this act and the provisions of Part B and Part H.

Section 105. Other duties of State agencies.

(a) Statewide system.—The Department of Health, the Department of Public Welfare and the Department of Education shall be responsible for the establishment and maintenance of a Statewide system of early intervention services as provided in Chapter 3.

(b) Rulemaking.—The Department of Health, the Department of Public Welfare, the State Board of Education as the regulatory authority for the Department of Education and the Department of Education for standards shall submit draft regulations and standards to the council relating to the implementation of this act prior to formal promulgation in order to receive the recommendations of the council. If recommendations are not received by the appropriate State agency within 60 days of receipt by the council, the respective department or board may continue to develop and promulgate regulations and standards.

(c) Annual reports.—By July 31, the Department of Health, the Department of Public Welfare and the Department of Education shall submit annual reports to the council on the status of early intervention services during the preceding calendar year. These reports shall be used as the basis for the report submitted by the council under section 106(f)(4).

Section 106. Council.

(a) Establishment.—The Interagency Coordinating Council is established. The council shall consist of 15 voting members appointed by the Governor. The council shall serve as the council required by the Education of the Handicapped Act Amendments of 1986 (Public Law 99-457, 100 Stat. 1145). The term of office of the voting members shall be three years, except for the cabinet officers or their designees who shall serve as long as they are in office.

(b) Membership.—The membership of the council shall consist of the following:

(1) Three parents of handicapped infants, toddlers or eligible young children.

(2) One provider of a child development program, such as Head Start.

(3) One parent of a child who has received early intervention services and is now beyond six years of age.

(4) Three providers of early intervention services, including one school district provider, one intermediate unit provider and one private provider.

(5) One member from the General Assembly.

(6) One representative of the American Academy of Pediatrics.

(7) One county mental health/mental retardation administrator or designee.

(8) One individual involved in personnel preparation.

(9) The Secretary of Education or a designee.

(10) The Secretary of Public Welfare or a designee.

(11) The Secretary of Health or a designee.

(12) As ex officio members, who shall not have voting privileges: a representative of the Developmental Disabilities Planning Council and members appointed by the chair of the council.

(c) Designees.—The designees of the cabinet officers under subsection (b) must be deputy secretaries, commissioners or bureau directors.

(d) Officers.—The chair of the council shall be appointed by the Governor and must be selected from those members who are neither employees of the Commonwealth nor elected officials.

(e) Committees.—The chair of the council may appoint special committees, which may include nonmembers of the council, to make recommendations to the council concerning key issues related to this act.

(f) Powers and duties.—The council has the following powers and duties:

(1) To review and comment to the Department of Health, the Department of Public Welfare, the Department of Education and the State Board of Education on draft regulations and standards for the implementation and maintenance of a Statewide system of early intervention services which are in accordance with the provisions of this act and Parts B and H.

(2) To review and comment to the appropriate legislative committees and the Independent Regulatory Review Commission on regulations and standards proposed under this act.

(3) To assist and advise Commonwealth agencies in their effort to carry out the provisions of this act. This paragraph includes, but is not limited to:

(i) recommendations for the implementation and maintenance of a Statewide comprehensive, coordinated, multidisciplinary, interagency program, as described in Chapter 3;

(ii) suggestions regarding sources of fiscal and other support from Federal, State, local and private sources, including insurance coverage; and

(iii) recommendations regarding in-service training and personnel competencies.

(4) To prepare and submit, with the cooperation of the Secretary of Education, the Secretary of Health and the Secretary of Public Welfare, an annual report during the month of September to the Governor and the Majority and Minority Chairmen of the Education Committee of the Senate and the Education Committee of the House of Representatives. This report shall include the number of programs being provided by intermediate units, school districts and public and private providers, including Head Start; the number of children being served; the status of compliance with State regulations and standards; descriptive information on the programs; information on personnel needs; any suggested changes in State statutes and regulations governing these programs; any information the United States Secretary of Education may require; and any other information the council deems appropriate.

(5) To meet at least six times a year.

(6) To perform other functions required of a state's interagency coordinating council under Part H.

(g) Compensation of members.—The members shall serve without compensation but shall be reimbursed for reasonable costs incurred, including costs related to child care.

(h) Staff.—Staff services for the council shall be provided by the Department of Health, the Department of Public Welfare and the Department of Education and shall include the preparation and distribution of the annual report required under subsection (f)(4).

CHAPTER 3 STATEWIDE SYSTEM FOR PROVISION OF EARLY INTERVENTION SERVICES

Section 301. Requirements.

A Statewide system of coordinated, comprehensive, multidisciplinary, interagency programs shall be established and maintained by the Department of Health, the Department of Public Welfare and the Department of Education to provide appropriate early intervention services to all handicapped infants, toddlers and their families and to eligible young children. The system shall include the following minimum components:

(1) Compatible definitions of the term "developmental delay" shall be promulgated and adopted by the Department of Public Welfare, the Department of Health and the Department of Education, with review and comment of the council under section 106(f)(1). The definition shall provide for the continuity of program services and shall be used in implementing programs under this act.

(2) An assurance that appropriate early intervention services are available to all eligible handicapped infants, toddlers and their families by September 1, 1991, and to all eligible young children by July 1, 1991.

(3) A timely, comprehensive, multidisciplinary evaluation of the functioning of each handicapped infant, toddler and eligible young child and the needs of the families to assist appropriately in the development of the handicapped infant, toddler and eligible young child.

(4) For all handicapped infants, toddlers and their families, an IFSP in accordance with Part H, including case management services in accordance with the service plan.

(5) For each eligible young child, an IEP in accordance with Part B.

(6) A comprehensive child-find system, including a system for making referrals to service providers that includes timelines and provides for the participation by primary referral sources.

(7) A public awareness program focusing on early identification of handicapped infants, toddlers and eligible young children.

(8) A central directory, which includes early intervention services, resources and experts available in this Commonwealth and research and demonstration projects being conducted in this Commonwealth.

(9) A comprehensive system of personnel development and policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out this act are appropriately and adequately prepared and trained.

(10) A procedure for securing timely reimbursement of funds.

(11) Procedural safeguards with respect to programs under this act.

(12) A system for compiling data on the numbers of handicapped infants, toddlers and their families and eligible young children in need of appropriate early intervention services; the number of infants, toddlers and their families and eligible young children served; and the types of services provided.

(13) A system of program standards evaluation and compliance.

(14) An exit criteria, which provides procedures for a child to exit from early intervention services. This exit plan must address both the needs of the child who has attained age of beginners as well as the child who, at any age between birth and age of beginners, no longer meets the eligibility criteria. If a child has been successful in obtaining age-appropriate behavior and abilities, the fact that the child participated in early intervention services may not be communicated to the school district unless the parent so chooses, nor may it be considered as a rationale for placement in public school age special education classes. If the child does not meet exit criteria and the child's IEP or IFSP demonstrates that the child will benefit from services which can be provided only through special education, nothing in this act shall prevent that placement. In either case, transition services shall be provided to the child and the child's parents.

(15) A system for the provision of services to children from birth to age two, inclusive, which are in compliance with Part H.

(16) A system for the provision of services to children three years of age to age of beginners which is in compliance with Part B, this act and regulations and standards.

Section 302. Program regulations and standards.

(a) Public Welfare.—The Department of Public Welfare shall define and address the following issues in developing regulations:

(1) Methods for locating and identifying eligible children.

- (2) Criteria for eligible programs.
- (3) Contracting guidelines.
- (4) Personnel qualifications and a system of preservice and in-service training.
- (5) Early intervention services.
- (6) Procedural safeguards.
- (7) Appropriate placement, including the least restrictive environment.
- (8) A system of quality assurance, including evaluation of the developmental appropriateness; quality and effectiveness of programs; assurance of compliance with program standards; and provision of assistance to assure compliance.
- (9) Data collection and confidentiality.
- (10) Interagency cooperation at the State and local level through the State interagency agreement and local interagency agreements.
- (11) Content and development of IFSP's.
- (12) Any other issues which are required under this act and Part H.

(b) Education.—The State Board of Education and the Department of Education shall define and address the following issues in developing regulations and standards:

- (1) Methods for locating and identifying eligible children.
- (2) Criteria for eligible programs.
- (3) Mutually agreed-upon written arrangement guidelines.
- (4) Personnel qualification and a system of preservice and in-service training.
- (5) Early intervention services.
- (6) Procedural safeguards.
- (7) Appropriate placement, including the least restrictive environment.
- (8) A system of quality assurance, including evaluation of the developmental appropriateness; quality and effectiveness of programs; assurance of compliance with program standards; and provision of assistance to assure compliance.
- (9) Data collection and confidentiality.
- (10) Interagency cooperation at the State and local levels.
- (11) Contents and development of IEP's.
- (12) Any other issues which are required under this act and Part B.

Section 303. Administration by Department of Public Welfare.

(a) Assistance to counties.—From the sum appropriated to the Department of Public Welfare for the purposes of this act, the department shall distribute funds to the county mental health and mental retardation offices, under section 509 of the act of October 20, 1966 (3rd Sp.Sess., P.L.96, No.6), known as the Mental Health and Mental Retardation Act of 1966, for the provision of early intervention services to children from birth to age two, inclusive. The county offices may meet their obligation to assure appropriate early intervention services to all eligible children through contracts with public or private agencies that meet the requirements of the regulations and

program standards developed under this act. The county offices shall assure annually that the service providers receiving funds are in compliance with the Commonwealth's regulations and standards.

(b) Federal benefits.—Nothing in this act shall preclude medical or other assistance available under Title V or XIX of the Social Security Act (Public Law 74-271, 42 U.S.C. § 701 et seq. or § 1396 et seq.) or any other benefits available under Federal law.

(c) Education.—In order to facilitate the transfer of responsibility for eligible children from the Department of Public Welfare to the Department of Education at one time each year, consistent with the beginning of the school year, the Secretary of Public Welfare may delegate responsibility for serving certain children under three years of age to the Department of Education and may accept a delegation of responsibility from the Secretary of Education under section 304(c) to serve certain children over the age of three.

(d) Use of funds.—From the sum of State funds appropriated by the General Assembly to the Department of Public Welfare for this act, the department shall use 2% to 4% of the appropriation for personnel training and program technical assistance.

Section 304. Administration by Department of Education.

(a) Overall responsibility.—

(1) Subject to the provisions of this subsection, the Department of Education shall be responsible for the delivery of early intervention services for all eligible young children between three years of age and the age of beginners.

(2) Eligible young children who receive early intervention services and who have attained the minimum age of admission to the school district kindergarten program under section 503 of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, shall be included in the school district's membership and entitled to the same subsidies and funding requirements under Article XXV of the Public School Code of 1949 as any kindergarten pupils. School districts and intermediate units that provide transportation for any eligible young child to any early intervention program shall be eligible for the purpose of reimbursement of transportation costs under sections 2509.1 and 2541 of the Public School Code of 1949.

(3) From the funds appropriated to the Department of Education for the purposes of this act, the department shall provide for the delivery of early intervention services for all eligible young children not receiving services provided in school district kindergarten programs. The department may provide for the delivery of some or all of such services through mutually agreed-upon written arrangements. An intermediate unit or school district may provide for some or all of such services through subcontracts with other public or private agencies which comply with the regulations and standards developed under this act. An intermediate unit or school district shall be responsible for the delivery of early intervention services only to the extent to which the intermediate unit or school district agrees to provide the services through mutually agreed-upon written arrangements

with the department. Mutually agreed-upon written arrangements for services for eligible young children in approved district kindergarten programs shall pay for all early intervention services not subsidized under paragraph (2). Each intermediate unit, school district or other public or private provider which enters into such written arrangements with the department shall assure the department annually that the service provider is in compliance with the Commonwealth's regulations and standards.

(4) The department shall provide for the programs of eligible young children who are not eligible for services provided in school district kindergarten programs and who are placed in approved private schools or chartered schools pursuant to the provisions of section 1376 or 1376.1 of the Public School Code of 1949 from the State funds appropriated to the department for special education in approved private schools. The department shall provide only for the excess costs for eligible young children who are eligible for services provided in school district kindergarten programs and who are placed in approved private schools or chartered schools pursuant to the provisions of section 1376 or 1376.1 of the Public School Code of 1949 from the State funds appropriated to the department for special education in approved private schools.

(b) Federal benefits.—Nothing in this act shall preclude medical or other assistance available under Title V or XIX of the Social Security Act (Public Law 74-271, 42 U.S.C. § 701 et seq. or § 1396 et seq.) or any other benefits available under Federal law.

(c) Public welfare.—The Secretary of Education shall provide for the transition of eligible children, including handicapped infants and toddlers, who, prior to their third birthday, received services under Part H. The Secretary of Education is authorized to accept responsibility pursuant to delegation from the Secretary of Public Welfare under section 303(c) for providing early intervention services to children less than three years of age. The Secretary of Education is authorized to delegate responsibility to the Secretary of Public Welfare for providing services for certain children over the age of three.

(d) Use of funds.—From the sum of State funds appropriated to the Department of Education for this act, the department shall use 2% to 4% of the appropriation for personnel training and program technical assistance. Section 305. Child identification, assessment and tracking system.

(a) Development of system.—The Department of Public Welfare, the Department of Education and the Department of Health shall develop a Statewide system for eligible child identification, assessment and tracking. This system shall be developed and coordinated by the agencies to assure that the system is compatible with the child-find system as required by Part B.

(b) At-risk children.—For the purposes of child identification, assessment and tracking for infants and toddlers, the Department of Public Welfare shall establish, by regulation, population groups to be included in these activities. The population groups shall include, but not be limited to, children whose birth weight is under 1,500 grams; children cared for in neonatal intensive care units of hospitals; children born to chemically dependent

mothers and referred by a physician, health care provider or parent; children who are seriously abused or neglected, as substantiated and referred by the county children and youth agency under the act of November 26, 1975 (P.L.438, No.124), known as the Child Protective Services Law; and children with confirmed dangerous levels of lead poisoning as set by the Department of Health. The Department of Public Welfare may establish other population groups by regulation as it deems necessary.

(c) Components of system.—The system shall include, but need not be limited to, the provision of the following activities and services:

- (1) The identification of eligible children and referral to early intervention services as soon after birth as possible.
- (2) Referral services for families of eligible children.
- (3) Continuing assessment of at-risk children from birth through age of beginners.
- (4) A description of agencies providing early intervention services and the services provided by each agency.
- (5) Pertinent information regarding the exit of the child from early intervention services.
- (6) The orderly transfer of the accumulated information to the appropriate provider upon the child's attainment of age of beginners, except if the child has met exit criteria contained in this act.

(d) Confidentiality.—Proper measures shall be developed and implemented to assure the confidentiality of the data contained in the system. Information shall be accessed only by appropriate staff of the Department of Public Welfare, the Department of Education and the Department of Health, including the staff of each agency's local entities, such as county mental health and mental retardation offices, school districts and intermediate units, which are responsible for the provision of services either directly or through subcontract to private providers. Nothing in this section is intended to preclude the utilization of data to provide for the preparation of reports, fiscal information or other documents required by this act or the Education of the Handicapped Act; but no information may be used in a manner which would allow for the identification of an individual child or family.

CHAPTER 5 MISCELLANEOUS PROVISIONS

Section 501. Regulations and standards.

Regulations of the State Board of Education, 22 Pa. Code Ch. 14, published at 20 Pa.B. 3339 (June 16, 1990), and the Department of Education Standards, 22 Pa. Code Ch. 342, published at 20 Pa.B. 3357 (June 16, 1990), as approved by the State Board of Education, governing the provision of early intervention services, shall take effect upon their reaffirmation by the State Board of Education. The definition of eligible young child in those regulations and standards is, with regard to the reference to being two years and nine months of age by September 1, superseded by the definition of eligible young child in this act. Should the State Board of Education propose to

make any revisions in the regulations at the time of reaffirmation and at any time thereafter, the regulations shall be subject to the provisions of the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law, the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act, and the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act.

Section 502. Existing programs.

Prior to the effective dates in section 503(2) and (3), as applicable, nothing in this act shall prohibit school districts, intermediate units or approved private providers which are engaged in the provision of early intervention services to eligible infants, toddlers and their families and to preschool children from continuing the services.

Section 503. Effective date.

This act shall take effect as follows:

- (1) For the purposes of meeting the program requirements imposed upon the Department of Public Welfare under the provisions of the Education of the Handicapped Act Amendments of 1986 (Public Law 99-457, 100 Stat. 1145), this act shall take effect July 1, 1990.
- (2) The provisions of this act pertaining to the entitlement of services by the Department of Public Welfare shall take effect September 1, 1991.
- (3) The provisions of this act pertaining to the entitlement of services by the Department of Education shall take effect July 1, 1991.
- (4) The remainder of this act shall take effect immediately.

APPROVED—The 19th day of December, A. D. 1990.

ROBERT P. CASEY