

Date of Hearing: April 24, 2024

ASSEMBLY COMMITTEE ON EDUCATION
Al Muratsuchi, Chair
AB 2206 (Addis) – As Amended April 11, 2024

[This bill was double referred to the Assembly Committee on Human Services and was heard by that Committee as it relates to issues in its jurisdiction.]

SUBJECT: Child daycare facilities: fire clearance requirements

SUMMARY: Requires a local fire enforcing agency or the State Fire Marshal to conduct a preinspection of a prospective applicant for childcare licensure and verify whether the facility is authorized to enroll ambulatory children only, or both ambulatory and nonambulatory children, as defined, and exempts a child daycare facility from obtaining a revised fire clearance for the subsequent addition of nonambulatory children once approved to enroll them. Specifically, **this bill:**

- 1) Requires a local fire enforcing agency or the State Fire Marshal, whichever has primary jurisdiction, to conduct a preinspection of a prospective licensee of a child daycare facility prior to the final fire clearance approval.
- 2) Requires that the preinspection verify whether the child daycare facility is authorized to enroll ambulatory children only or both ambulatory and nonambulatory children, even if the facility is not actively seeking to enroll nonambulatory children, for purposes of identifying any applicable modifications that are required for compliance with the federal Americans with Disabilities Act (ADA).
- 3) Exempts a child daycare facility from a revised fire clearance for the addition of each nonambulatory child once approved for enrolling nonambulatory children, unless the facility exceeds current capacity or the facility makes additional modifications after obtaining an initial fire clearance approval.
- 4) Defines “nonambulatory child” to mean a child under three years of age, or a child three years of age or older who is unable to leave a building unassisted under emergency conditions, including a child who is unable, or likely to be unable, to physically and mentally respond to a sensory signal approved by the State Fire Marshal or an oral instruction relating to fire danger, and a child who depends on mechanical aids, including, but not limited to, crutches, walkers, or wheelchairs.

EXISTING LAW:

- 1) Establishes the “Child Care and Development Services Act” to provide childcare and development services as part of a coordinated, comprehensive, and cost-effective system serving children from birth to 13 years of age and their parents, including a full range of supervision, health, and support services through full- and part-time programs, regardless of ethnic status, cultural background, or special needs. (Welfare and Institutions Code (WIC) 10207 et seq.)

- 2) Requires any person or entity operating, as specified, a child daycare facility in California to have a current valid license from the California Department of Social Services (CDSS). (22 California Code of Regulations (CCR) 101156(a))
- 3) Requires all childcare providers to secure and maintain a fire clearance in order to be licensed in California. (Health and Safety Code (HSC) 1596.809)
- 4) Requires that a prospective applicant for licensure be notified at the time of the initial request for information regarding application for licensure that, prior to obtaining licensure, the facility must secure and maintain a fire clearance approval from the local fire enforcing agency or the State Fire Marshal, whichever has primary fire protection jurisdiction. Further requires that the prospective applicant be notified of the provisions of Section 13235 of the HSC, relating to the fire safety clearance application, and that the fire clearance must be in accordance with state and local fire safety regulations. (HSC 1596.809)
- 5) Defines “nonambulatory persons” to mean persons unable to leave a building unassisted under emergency conditions, and includes any person who is unable, or likely to be unable, to physically and mentally respond to a sensory signal approved by the State Fire Marshal, or an oral instruction relating to fire danger, and persons who depend upon mechanical aids such as crutches, walkers, and wheelchairs. Specifies that a person who uses supportive restraints is deemed nonambulatory. Further specifies that a person is not deemed nonambulatory solely because they are deaf, blind, or prefers to use a mechanical aid. (HSC 13131; 22 CCR 101152 (n)(1)(C); 22 CCR 101152 (n)(1)(A-B); 22 CCR 102371 (a)(1))
- 6) Requires state-licensed facilities, including childcare centers, to obtain a fire clearance before admitting a nonambulatory person. (22 CCR 80020(b)(2))
- 7) Requires all childcare centers to secure and maintain a fire clearance approval by the city or county fire department, the district providing fire protection services, or the State Fire Marshal. Requires the request for fire clearance to be made through and maintained by the CDSS. (22 CCR 101171(a))
- 8) Requires the applicant to notify the CDSS if the childcare center plans to enroll children who are nonambulatory so that an appropriate fire clearance, approved by the city or county fire department, the district providing fire protection services, or the State Fire Marshal, can be obtained prior to the acceptance of such children. (22 CCR 101171(b))
- 9) Requires licensees of a childcare center requesting the addition of a new infant, toddler, preschool, school-age, or mildly ill child components to their single licensed childcare center to submit an amended Application for a Child Care Center License form (LIC 200A [3/23]), which is incorporated by reference; a program description; a sketch of the center showing where the children in each age component will be located; a schedule of outdoor activities; and if necessary, a fire clearance. (22 CCR 101169 (a)(1)(A))
- 10) Requires a large family childcare home to secure a fire clearance approval by the city or county fire department, the district providing fire protection services, or the State Fire Marshal. (22 CCR 102371(a))

- 11) Exempts a fire clearance from being required for a small family childcare home. (22 CCR 102371(b))
- 12) Requires that, commencing July 1, 2024, at least 10% of a part-day California State Preschool Program's (CSPP) contracting agency's funded enrollment be reserved for children with exceptional needs. (Education Code (EC) 8028)
- 13) Establishes the Inclusive Early Education Expansion Program (IEEEP) for the purpose of increasing access to inclusive early care and education programs. Authorizes competitive grants to increase access to subsidized inclusive early care and education programs for children up to five years of age, including those defined as "children with exceptional needs" in low-income and high-need communities.
- 14) Establishes the Special Education Early Intervention Program Grant (SEEIPG), to supplement existing special education resources currently required to be provided pursuant to federal and state law and promote a targeted focus on services and supports being offered in inclusive settings, to the extent practicable. (EC 56836.40)

Federal law:

- 15) Establishes the ADA of 1990, instituting comprehensive national standards to eliminate discrimination against individuals with disabilities in various areas of public life. (42 United States Code [U.S.C.] 12101 et seq.)
- 16) Prohibits discrimination by a daycare center or educational entity when admitting a child with disabilities into the program. (42 U.S.C. 12181 et seq.)
- 17) Establishes the Individuals with Disabilities Education Act (IDEA), governing how states and public agencies provide early intervention, special education, and related services to children with disabilities. Further addresses the educational needs of children with disabilities from birth to 21 years of age and requires that infants and toddlers with disabilities receive early intervention services from birth through three years of age, also known as an Individualized Family Service Program (IFSP). (20 U.S.C. 1400 et seq.)
- 18) Requires that, in accordance with federal law, a free appropriate public education (FAPE) be available to individuals with exceptional needs. (20 U.S.C. 1400 et seq.)
- 19) Requires that, in accordance with federal law, each public agency ensure the following to address the least restrictive environment for individuals with exceptional needs such that:
 - a) To the maximum extent appropriate, individuals with exceptional needs, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and
 - b) Special classes, separate schooling, or other removal of individuals with exceptional needs from the regular educational environment occur only if the nature or severity of the disability is such that education in the regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. 1400 et seq.)

FISCAL EFFECT: This bill has been keyed a possible state-mandated local program by the Office of Legislative Counsel.

COMMENTS:

Need for the bill. The author states, “All children and families deserve unrestricted access to childcare, regardless of their ability. Revising these outdated regulations is a simple step that ensures providers can immediately enroll children with disabilities into their programs while maintaining rigorous safety standards.”

Removing barriers to enrolling children with disabilities in childcare and early education programs. This bill is intended to remove a barrier to enrolling children with disabilities in childcare and early education programs. Early education alongside non-disabled peers helps children move into inclusive learning environments once they enter the public education system. According to the Santa Clara County Office of Education, “Families of children with disabilities have greater difficulty finding a childcare provider who will accept their child and are three times more likely to experience job disruptions because they are unable to secure reliable childcare. Thanks to the recent adjustment factor increase for children with exceptional needs and new mandates to set-aside slots, many more childcare providers are eager to enroll children with disabilities but are prevented from doing so by outdated regulations enacted prior to safety measures provided by the Americans with Disabilities Act (ADA) and modern state building codes requiring sufficient smoke detectors, multiple egress points, signage, handrails, ramps, and door clearance standards.”

Inclusive early education is a state priority. The Master Plan for Early Learning and Care (2020) states, “Research also strongly supports the inclusion of children with disabilities in early learning and care as part of the most effective way to support their learning and development while also demonstrating positive impacts on their peers’ development. Unfortunately, they often experience the early learning and care system as separate and unequal participants, with Black and Native American children under-identified as needing such services. To remedy this, we must also appropriately identify all children who have a disability and provide them with support and accommodations by including them with their peers.”

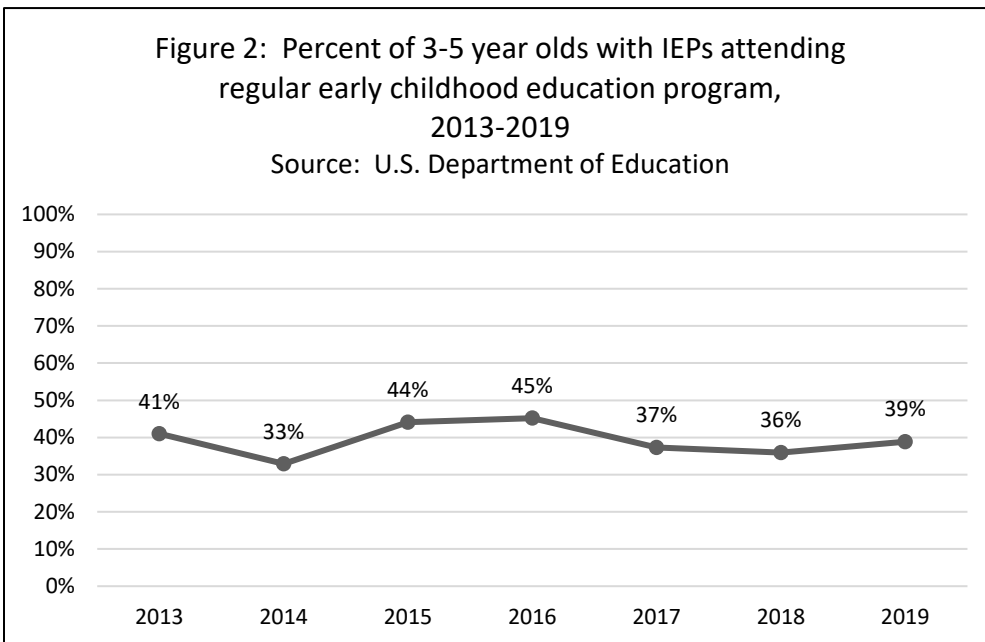
The state has recently made policy changes and significant investments in promoting the inclusion of children with disabilities in early learning and care programs.

- AB 210 (Committee on Budget), Chapter 62, Statutes of 2022 requires that, commencing July 1, 2024, at least 10% of a part-day CSPP’s contracting agency’s funded enrollment be reserved for children with exceptional needs.
- AB 1808 (Committee on Budget), Chapter 32, Statutes of 2018, establishes the IEEEP, to award grants on a competitive basis for allocation to local educational agencies (LEAs) for the purposes of increasing access to inclusive early learning and care (ELC) programs for children with disabilities, including children with severe disabilities, and for the cost of conducting an evaluation of the IEEEP.
- AB 130 (Committee on Budget), Chapter 44, Statutes of 2021, established the SEEIPG to supplement existing special education resources currently required to be provided pursuant to federal and state law and promote a targeted focus on services and supports

being offered in inclusive settings, to the extent practicable. \$300 million in ongoing funding was provided for this starting in the 2021-22 fiscal year.

- According to the Assembly Committee on Human Services, the Childcare and Development Infrastructure Grant Program (IGP) provides \$250 million to invest in childcare facility infrastructure across California. This investment was increased by \$100.5 million, for a total of \$350 million in the 2022-23 budget. Applicants were able to apply for the Minor Renovation and Repair Infrastructure Grant or the New Construction and Major Renovation Grant. Eligible projects under the latter program allowed facilities to use funding to comply with the ADA, with respect to indoor and outdoor spaces and fire safety projects. While the Childcare and Development IGP is still in progress, preliminary data shows that CDSS received 5,351 total applications, totaling \$386 million in requests. Of the 3,854 applications that are being funded, 9.24% planned to do ADA upgrades, and 12.25% planned to do fire safety projects.

California is falling short of its goals for the inclusion of children with disabilities in early education. The IDEA requires each state to develop a State Performance Plan (SPP) and an Annual Performance Report (APR) that evaluates the state’s efforts to comply with federal special law, and how the state will improve its implementation. The APR consists of 17 indicators.



SPP indicator (6a) relates to preschool inclusion, requiring states to report on the percentage of children with Individualized Education Programs (IEPs) ages 3 to 5 year olds attending a regular early childhood program and receiving the majority of special education and related services in the regular early childhood program.

As shown in Figure 2, less than half of California preschool-aged children with disabilities attend regular early childhood education programs and receive the majority of their services in those programs. However, performance on this indicator has increased in recent years, rising from 20.2% in 2011 to 38% in 2019. The rate declined to 29% in 2020. New targets adopted for the current six-year cycle set the goal for this indicator at 49% by 2025.

The State Board of Education (SBE) adopted revised SPP targets in January, 2022. With regard to the state target for least restrictive environment (LRE) (for K-12 grades), adopted targets

increase from 53% in 2019 to 70% in 2025. *The Committee may wish to consider that,* considering the slow progress the state has made in this area to date, and the increase in inclusion required by 2025, significant support will be needed to achieve the state's new targets.

Disparities in Access to Childcare Services for Children with Disabilities. According to the Assembly Committee on Human Services' analysis of this bill:

- The Center for American Progress analyzed data from the 2016 Early Childhood Program Participation Survey and found that parents of disabled children disproportionately experience at least some difficulty finding childcare (34%) compared with parents of nondisabled children (25%). One reason is that early intervention services exclude childcare options.
- Another significant barrier to accessing childcare is the scarcity of specialized childcare facilities equipped to cater to the diverse needs of children with disabilities. The ADA prohibits discrimination against individuals with exceptional needs, including children with disabilities in need of childcare. Specifically, the ADA stipulates that childcare programs cannot exclude children with disabilities unless including them would require a "fundamental alteration of the program" and that programs must make "reasonable modifications" to integrate individuals with exceptional needs. While many childcare facilities may accommodate some level of diversity, childcare programs often operate with tight budgets that make financing accommodations difficult. For parents who have children with physical disabilities, parents or guardians must eliminate any programs that make climbing steps difficult or that do not have a ramp for wheelchairs.
- Due to the limited availability and accessibility of childcare services for children with disabilities, they are more likely than their nondisabled counterparts to receive care from multiple sources, often relying on extended family or chosen family for childcare. Some parents report even having to take on the full responsibility of childcare due to their children's more medically complex needs and concerns about their children's health or safety in group settings. Many of these parents report leaving their jobs, not taking a job, or making significant changes to their jobs due to problems with childcare. The Center for American Progress reports that one in five parents of children with disabilities make at least one of these career sacrifices each year nationwide.

Definition of nonambulatory children. According to the Assembly Committee on Human Services, state law defines "nonambulatory persons" to mean persons unable to leave a building unassisted under emergency conditions, which includes any person who is unable, or likely to be unable, to physically and mentally respond to a sensory signal approved by the State Fire Marshal, or an oral instruction relating to fire danger. It also includes persons who depend upon mechanical aids such as crutches, walkers, and wheelchairs. Existing law does not have a definition for "nonambulatory children," which this bill would establish.

Fire clearance process and requirements. According to the Assembly Committee on Human Services' analysis of this bill:

Even when childcare facilities attempt to enroll children with physical disabilities, existing state law requires all childcare facilities to obtain an approved fire clearance first from a fire marshal in order to be licensed. However, when it comes to enrolling nonambulatory children

and seeking to obtain an initial or revised fire clearance, per regulations, only CCCs and large FCCHs are required to obtain an approved fire clearance before enrolling a nonambulatory child, while small FCCHs are exempt from this requirement.

Prior to submitting an application for an initial fire clearance to CDSS' CCLD, any childcare facility may request that a local fire authority, as listed above, conduct a pre-inspection to help facility owners identify necessary changes to meet requirements. CCLD then fills out and submits a Fire Safety Inspection Request form to the fire authority having jurisdiction, which includes information on the capacity of licensed ambulatory or nonambulatory occupants covered by the request. The fire authority then conducts a thorough fire safety inspection of the facility to assess compliance with fire safety regulations. If the facility meets all requirements, the fire clearance is granted, and the childcare facility receives an official document indicating they have passed the fire safety inspection.

For CCCs, when it comes to requesting the addition of a new infant, toddler, preschool, school-age, or mildly ill child, a licensee must submit an amended Application for a Child Care Center License form, which includes, among other things, a fire clearance, if necessary. Regulations further stipulate that CCCs are required to notify CDSS if the CCC plans to enroll children who are nonambulatory, as defined, so that an approved fire clearance can be obtained prior to the acceptance of such children. When it comes to requesting a revised fire clearance for CCCs and FCCHs, such as a renewal or capacity change, CCLD is required to insert the capacity of the previous clearance. Likewise, if the CCC or large FCCH is intended to house a mix of ambulatory, nonambulatory, and bedridden children, CCLD must show the new total of the three types of occupants.

Existing law states that a final fire clearance inspection for a child daycare facility must be completed within 30 days of receipt of the request for the final inspection. However, advocates say it takes longer. During this time, a childcare provider cannot legally or safely provide care to these children, even though it is an illegal form of discrimination under the ADA. Parents or guardians either have to outright eliminate these programs from the start or wait to be denied by a childcare provider – either through a fire clearance denial or simply because a childcare provider does not want to go through the trouble of tackling administrative or modification hoops.

What is inclusion? There are multiple definitions of “inclusion,” but most include the following elements:

- Students with disabilities are educated in general education settings with appropriate supports;
- Students with disabilities participate in other school programs as full members of the school community;
- Staff support universal access to education; and
- Staff have the knowledge, resources, and support to effectively teach all pupils.

Inclusion and “mainstreaming” are sometimes used interchangeably, but these terms have distinct meanings. Mainstreaming generally refers to the practice of placing students with disabilities, who otherwise are educated in separate settings, in the general education setting for specified periods of time or for specific activities. Inclusion, in contrast, refers to the practice of placing students with disabilities in the general education setting with appropriate supports.

Research on the effect of inclusion on children with and without disabilities. Research over the last thirty years has found numerous benefits for students with disabilities and students without disabilities (National Council on Disability, 2018). When students are included, they have more access to the general curriculum and effective instruction, and as a result they achieve:

- Higher rates of academic performance in language arts and mathematics;
- Fewer absences from school;
- Fewer referrals for disruptive behavior;
- Higher likelihood of attending college;
- Better employment and independent living outcomes after high school;
- Improved communication;
- Improved expressive language and literacy skills;
- More satisfying and diverse friendships;
- Higher levels of social engagement with peers without disabilities;
- Less disruptive behavior; and
- More social competence.

Although students with extensive support needs (i.e., students with intellectual disabilities, multiple disabilities, or autism) have higher rates of segregated schooling, research shows that these students actually accrue more academic benefits when included in general education instruction, particularly increases in literacy skills.

Research has found that the inclusion of students with disabilities has either a positive effect or no negative effect on the academic, social, and personal development of students without disabilities when they are educated with peers who have intellectual, learning, or other disabilities. Research has found that inclusion benefits students without disabilities, with:

- Positive effect, or no negative effect, on academic, social, and personal development;
- Reduced fear of human differences;
- Increased comfort and awareness of differences;
- Growth in social cognition;
- Improvements in self concept; and
- Growth of ethical principles.

Barriers to inclusion. The 2015 report by the Statewide Special Education Task Force on Special Education, jointly published by the SBE, the CTC, and the CDE, titled *One System: Reforming Education to Serve All Students*, noted that “a structural, institutional, philosophical, and habitual divide currently exists in California between general and special education, even though special education has always been defined as part of general education. This divide obstructs the state’s ability to create [an] effective, coordinated, coherent system of education.”

The NCD’s 2018 report, *The Segregation of Students with Disabilities*, identifies several barriers to inclusion of students with disabilities, including “organizational traditions,” noting: “Once school districts have made financial and personnel investments in creating or maintaining segregated settings and allocating teachers and other staff in small teacher-student ratios, there is an organizational tendency to maintain the status quo.”

Recommended Committee Amendments. *Staff recommends that this bill be amended* to exempt an existing licensee, if they obtain a new fire clearance to enroll a non-ambulatory child, from obtaining a revised fire clearance when enrolling other non-ambulatory children, unless the facility exceeds current capacity or the facility makes additional modifications after already obtaining fire clearance approval.

Arguments in support. The Santa Clara County Office of Education writes, “Families of children with disabilities have greater difficulty finding a childcare provider who will accept their child and are three times more likely to experience job disruptions because they are unable to secure reliable childcare. Disproportionate access to childcare limits early learning and social emotional growth opportunities for children with disabilities and contributes to the academic achievement gap in K-12 between students with and without disabilities.

Thanks to the recent adjustment factor increase for children with exceptional needs and new mandates to set-aside slots, many more childcare providers are eager to enroll children with disabilities but are prevented from doing so by outdated regulations enacted prior to safety measures provided by the Americans with Disabilities Act (ADA) and modern state building codes requiring sufficient smoke detectors, multiple egress points, signage, handrails, ramps, and door clearance standards. In light of significantly increased fire safety standards adopted across all settings over the last four decades, it no longer seems appropriate to bar enrollment of nonambulatory children if a provider meets conditions demonstrating that their facility can be evacuated in an emergency.”

REGISTERED SUPPORT / OPPOSITION:

Support

California County Superintendents
EveryChild California
First 5 Santa Clara County
Monterey County Office of Education
Santa Clara County Office of Education
Santa Clara County School Boards Association
Santa Cruz County

Opposition

None on file

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