

Date of Hearing: April 20, 2022

ASSEMBLY COMMITTEE ON EDUCATION
Patrick O'Donnell, Chair
AB 2827 (Quirk-Silva) – As Amended April 7, 2022

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

SUBJECT: Child daycare facilities

SUMMARY: Requires the California Department of Social Services (CDSS), by January 1, 2024, to revise its regulations to permit children with exceptional needs who are enrolled in separate programs or classrooms from nondisabled children to use outdoor play spaces simultaneously with nondisabled children without first seeking a waiver of Title 22 of the California Code of Regulations (CCR), and to specify any health and safety requirements that shall be met when simultaneous use of outdoor play spaces occurs. Specifically, this bill:

- 1) Requires the CDSS, by January 1, 2024, to revise its regulations to permit children with exceptional needs who are enrolled in separate programs or classrooms from nondisabled children to use outdoor play spaces simultaneously with nondisabled children without first seeking a waiver of Title 22 of the CCR regarding outdoor space and to specify any health and safety requirements that shall be met when simultaneous use of outdoor play spaces occurs.
- 2) Permits the CDSS to implement this requirement by means of an all-county letter or similar instruction.

EXISTING LAW:

- 1) Establishes the California Child Daycare Facilities Act, creating a separate licensing category for child daycare centers and family daycare homes within CDSS's existing licensing structure. (Health and Safety Code Section [HSC] 1596.70 *et seq.*)
- 2) Defines "child daycare facility" to mean a facility that provides nonmedical care to children under 18 years of age, as specified, including daycare centers, employer-sponsored childcare centers, and family daycare homes. (HSC 1596.750)
- 3) Defines "children with exceptional needs" to mean either of the following:
 - a) Infants and toddlers under three years of age who have been determined to be eligible for early intervention services pursuant to the California Early Intervention Services Act, including an infant or toddler with a developmental delay or established risk condition, or who is at high risk of having a substantial developmental disability; and
 - b) Children 3 to 21 years of age who have been determined to be eligible for special education and related services by an individualized education program team, including children with intellectual disabilities, hearing impairments, speech or language impairments, visual impairments, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities,

who need special education and related services. (Welfare and Institutions Code Section [WIC] 10213.5 (l))

- 4) Establishes regulations for licensed childcare centers. (22 CCR , Division 12, Chapter 1)
- 5) Provides all of the following requirements for the outdoor activity space for a childcare facility:
 - a) At least 75 square feet of outdoor activity space per child, as specified;
 - b) Be situated to provide a shaded rest area and to permit children to reach the space safely;
 - c) Equipment and activity areas arranged so that there is no hazard from conflicting activities;
 - d) Maintained surface in a safe condition and free of hazards;
 - e) Areas around and under high climbing equipment, swings, slides, and other similar equipment shall be cushioned with material that absorbs falls;
 - f) Sandboxes shall be inspected daily;
 - g) Playgrounds shall be enclosed by a fence at least four feet high to protect children and to keep them in the outdoor activity area; and
 - h) Any construction or equipment that could pose a hazard in the space shall be made inaccessible to children in care. (22 CCR 101238.2)
- 6) Authorizes CDSS to approve the use of alternate concepts, programs, services, procedures, techniques, equipment, space, personnel qualifications or staffing ratios, or the conduct of experimental or demonstration projects, under the following circumstances:
 - a) Such alternatives shall be carried out with provisions for safe and adequate services, and shall in no instance be detrimental to the health and safety of any child in care.
 - b) The applicant or licensee shall submit to CDSS a written request for a waiver or an exception and substantiating evidence supporting the request.
 - c) Within 30 days of the receipt of a request for a waiver or an exception, CDSS shall notify the applicant or licensee in writing of the approval or denial of the request, or of the need for additional information to substantiate the request. Further, the department shall maintain and make available for review, at the childcare center, a copy of the written approval or denial. (22 CCR 101175)
- 7) Requires that every individual with exceptional needs who is eligible to receive special education instruction and related services receive that instruction and those services at no cost to his or her parents or, as appropriate, to him or her.
- 8) 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 occurs 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.
- 9) Establishes the Special Education Early Intervention Preschool 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. (Education Code (EC) 56836.40)
- 10) Requires that this funding be used to provide services and supports in inclusive settings that have been determined to improve school readiness and long-term outcomes for infants, toddlers, and preschool pupils from birth to five years of age, including all of the following:
- a) Early intervention services, including preschool and supportive services for children from birth to five years of age who are not meeting age-appropriate developmental milestones and are at risk for being identified as eligible for special education and related services. This may include children who received IFSP services but did not qualify for an IEP, and children who have not received an IFSP nor an IEP;
 - b) One-time programs, services, or resources for preschool children with exceptional needs that may not be medically or educationally necessary or required by an IEP or in an IFSP, but which the school district has determined will have a positive impact on a young child;
 - c) Strategies to improve pupil outcomes as identified through the state system of support, including inclusive educational programming that ensures a pupil's right to placement in the least restrictive educational environment;
 - d) Wraparound services for preschool children with exceptional needs not required by federal or state law;
 - e) Expansion of inclusive practices to ensure that preschool children with exceptional needs have access to learn in the least restrictive environment; and
 - f) Professional development for preschool teachers, administrators, and paraprofessionals on evidence-based strategies to build capacity to serve preschool children with exceptional needs in more inclusive settings. Permits this professional development to also include training for teachers, administrators, and paraprofessionals on the development of physical, social, emotional, and academic skills and on developing appropriate IEPs for preschool children with exceptional needs that ensure access to a free, appropriate public education in the least restrictive environment (LRE).
- 11) Establishes the Inclusive Early Education Expansion Program (IEEEP) for the purpose of increasing access to inclusive early care and education programs. Requires the CDE's

divisions for special education and early childhood programs to work collaboratively to administer the program.

- 12) Requires an LEA applying for the IEEEP to include all of the following information in its grant application:
- a) A proposal 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;
 - b) A plan to fiscally sustain subsidized spaces or programs created by grant funds beyond the grant period;
 - c) The identification of resources necessary to support lead agency professional development to allow staff to develop the knowledge and skills required to implement effective inclusive practices and fiscal sustainability; and
 - d) A description of the special education expertise that will be used to ensure the funds are used in a high-quality, inclusive manner.
- 13) Permits the CDE to reserve up to 1% of program funds to support an evaluation to address improved access, participation, and supports to inclusive early care and education programs and program and child outcomes.
- 14) Requires the CDE to convene a stakeholder workgroup that includes, but is not limited to, representatives from the relevant divisions in the department, the State Department of Developmental Services (DDS), the State Interagency Coordinating Council on Early Intervention, LEAs, appropriate county agencies, regional centers, and resource and referral agencies, with the goal of providing continuous improvement in the inclusion of children with exceptional needs in early care and education settings.

FISCAL EFFECT: Unknown

COMMENTS:

What would this bill do? Under current law, if a licensed childcare center serving nondisabled children wants to share its outdoor space with a program that serves children with exceptional needs, the childcare center has to submit a waiver to the CDSS to request the ability to share the outdoor space. The outdoor space would still have to adhere to the requirements listed in the Title 22 regulations for outdoor space (e.g. 75 square feet per child of outdoor activity space) and the licensed facility must still maintain approved ratios; however, with an approved waiver the outdoor space could be shared between the separate programs. This bill would allow children with exceptional needs to play and interact with their peers during outdoor activities without placing unnecessary requirements on the childcare facility, while still maintaining health and safety standards.

Need for the bill. According to the author, “As an elementary school teacher for over 30 years, I think it is important that every child has the opportunity to learn in a diverse environments in order for them to be exposed and develop an understanding and respect for each other's

differences as well as similarities. As a State, we should be able to foster that without barriers or processes that hinder students or programs. Instead of requiring a waiver, clear standards should be in place for all programs to adhere, to in order to ensure the health and safety of all children.”

Community care licensing and childcare facilities: The Community Care Licensing Division (CCLD) within CDSS has the responsibility of licensing and monitoring facilities that fall within its jurisdiction, such as residential care facilities for the elderly, out-of-home placements for foster youth, and childcare facilities, among others. CCLD is also responsible for ensuring that these facilities comply with all applicable laws and regulations as well as for overseeing any necessary corrective actions in the event of noncompliance.

CCLD has the responsibility of licensing and monitoring the state’s 12,768 daycare centers, with a capacity to serve 663,454 children. There are an additional 2,201 licensed school-age daycare facilities with a capacity to serve 139,610 children. CCLD is required to conduct unannounced site visits of all licensed child daycare facilities and homes. CCLD conducts random inspections of 30% of facilities annually, and each facility must be visited at least once every three years; some exceptions triggering more frequent inspections exist.

The licensure, maintenance, and operation of child daycare centers and family daycare homes in the State are governed by the California Child Daycare Facilities Act. This law and the attendant regulations found in the California Code of Regulations Title 22 establish, among other things, general health and safety requirements, staff-to-child ratios, and provider training requirements.

Title 22 regulations: CCR Title 22, Division 12—commonly referred to as “Title 22 regulations”—establishes regulations for licensed childcare facilities in California (Chapter 1 establishes licensing requirements for childcare centers and Chapter 2 establishes regulations for family daycare homes). Regulations pertaining to childcare centers cover a wide range of health and safety standards for both infant care centers and school-age childcare centers, including, among many other things, discipline, food service, teacher-child ratios, and facility space requirements—including the square footage, access, and maintenance requirements for outdoor activity space.

CDSS has the authority to approve the use of alternate requirements than those stated in the CCR, including space requirements, if a licensee submits a written request for a waiver. Any alternative must be carried out with provisions for safe and adequate services and must not be detrimental to the health and safety of any child in care.

What is inclusion of children with disabilities? This bill aims to increase the inclusion of disabled children on playgrounds with non-disabled children. 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
- School staff support universal access to education
- School staff are provided 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. 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
- more social competence

Although students with extensive support needs (i.e., students with intellectual disabilities, multiple disabilities, autism) have higher rates of segregated schooling, research shows that these students actually acquire 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 had intellectual, learning, or other disabilities. Research has found that inclusion benefits students without disabilities, through:

- 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
- Growth of ethical principles

How inclusive are California's preschools? This bill is intended to facilitate the simultaneous use of playgrounds by disabled and non-disabled children.

The federal IDEA requires the U.S. Department of Education (USDOE) to monitor states' implementation of the IDEA. Each state

is required to develop and submit an SPP. The SPP is a six-year plan that includes 17 measures, or indicators, that are related to either IDEA compliance or student performance.

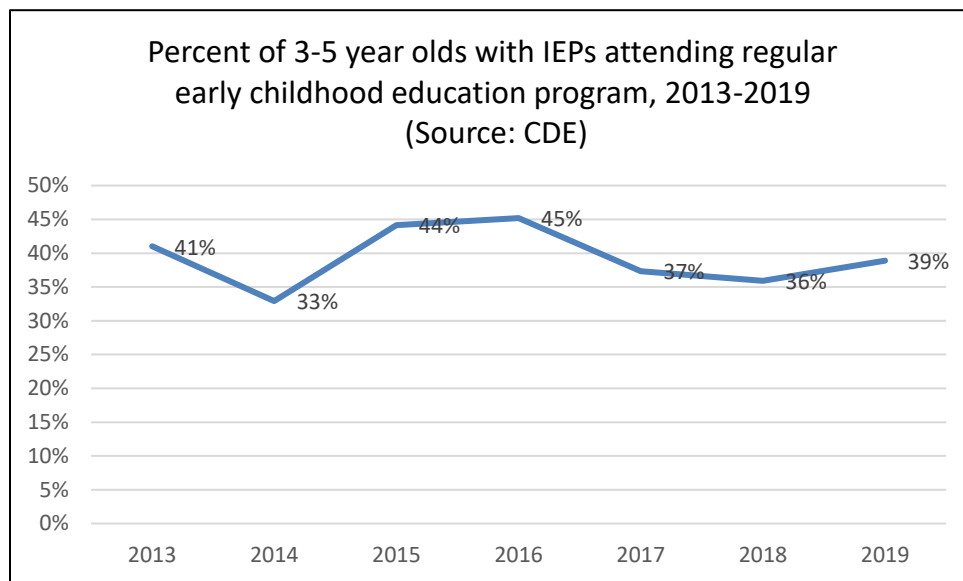
SPP indicator (6a) relates to preschool inclusion, requiring states to report on the “percentage of children with IEPs ages 3 to 5 year olds attending a regular early childhood program and receiving the majority of special education and related services in the regular early childhood program.”

As shown on the chart on this page, less than half of California preschool-aged children with disabilities attend regular early childhood education programs and receive the majority of their services in that program. However, performance on this indicator has increased in recent years, rising from 20.2% in 2011 to 45.2% in 2016. New targets adopted for the current six year cycle set the goal for this indicator at 49% by 2025.

Barriers to inclusion in early education. The 2015 report by the Statewide Special Education Task Force on Special Education, jointly published by the SBE, the Commission on Teacher Credentialing, and the CDE, titled *One System: Reforming Education to Serve All Students*, noted that “as with older children, most 3 to 5 year olds with disabilities learn best when they attend preschools alongside their age-mates without disabilities to the greatest extent possible.” However, the report noted, “Currently, only one in five preschool-aged children with identified disabilities is enrolled in such settings.”

The Task Force cites several causes of this low rate of inclusion:

- Lack of early learning programs, including preschool, and uneven availability throughout the state;
- Lack of coordination between programs run by the regional centers and those operated by school districts, and disruptions caused by the transition between systems;
- No requirement for early learning programs to reserve spots for children with disability (as is required of federal Head Start programs);



- No universally adopted educational standards for infant/toddler services or preschools across programs;
- Uneven funding of special education, and the lack of funding for 3 and 4 year olds in the state's AB 602 funding formula; and
- Issues in early educator preparation.

Stakeholders also report other barriers to inclusion of children in early learning programs, including administrative barriers related to Title 22 licensing requirements for childhood education programs.

Arguments in support. The Coalition for Adequate Funding for Special Education writes, "California has done much to ensure inclusionary policies in the classroom, recognizing the importance for students with exceptional needs to learn alongside their peers. This bill would extend this benefit to children at "recess" while adhering to existing health and safety practices. We strongly believe that every child deserves the opportunity to learn in diverse environments to be exposed to and develop an understanding and respect for each other's differences as well as similarities. As a community, we should be able to foster that without barriers or processes that hinder students or programs. Instead of requiring a waiver, clear standards should be in place for all programs to adhere to in order to ensure the health and safety of all children."

Related legislation. AB 2541 (Quirk Silva) of the 2021-22 Session would add funding to the SEEIPG for the purpose of school districts contracting with the State Special Schools for the Deaf and nonpublic schools or nonpublic agencies for specified early language intervention services for children who are deaf or hard of hearing, ages 0-5.

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.

AB 1808 (Committee on Budget), Chapter 32, Statutes of 2018, established the IEEEP, which authorized the SPI to award grants on a competitive basis for allocation to LEAs for the purposes of increasing access to inclusive early learning and care programs for children with disabilities, including children with severe disabilities, and for the cost of conducting a program evaluation.

REGISTERED SUPPORT / OPPOSITION:

Support

Coalition for Adequate Funding for Special Education
Los Angeles County Office of Education
SELPA Administrators of California

Opposition

None on file

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