



# Child Law Practice

Vol. 23 No. 3

May 2004

Helping Lawyers Help Kids

ABA 11th National Conference  
on Children and the Law  
June 3-5, 2004, Washington, DC  
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## LEGISLATIVE UPDATE

### Opening the Door to Early Intervention for Abused and Neglected Children: A New CAPTA Requirement

by Sheryl Dicker & Elysa Gordon

Infants and toddlers are the fastest growing group to enter, remain in, and reenter the child welfare system. The majority has serious, unmet physical, developmental, and emotional health needs.

The newly amended and reauthorized Child Abuse Prevention and Treatment Act (CAPTA)—the Keeping Children and Families Safe Act of 2003 (P.L. 108-36)—now requires states to refer abused and neglected young children to the Early Intervention Program (known as Part C of the Individuals with Disabilities Education Act, “EIP”).<sup>1</sup> This referral requirement opens the door to one of the richest entitlement to services for children under age three involved in substantiated cases of abuse or neglect and the families who care for them.<sup>2</sup> Additionally, the referral provision provides child welfare advocates and courts with a tool for permanency planning and decision making.

Effective lawyering and advocacy for abused or neglected children requires ensuring access to all services necessary for their healthy development, including early intervention services. This article offers strategies for advocates to access this system of services for abused or neglected children and highlights innovative models that refer eligible children to the EIP. The next step,

navigating the EIP process will be covered in a future *CLP* article on meeting the education needs of young children.

#### The Case for Early Intervention for Maltreated Children<sup>3</sup>

- Nearly 80% are prenatally exposed to maternal substance abuse.
- Nearly 40% are born low birth weight and/or premature.
- More than half have developmental delays or disabilities.
- Children with disabilities are three times more likely to be maltreated than other children.<sup>4</sup>

#### Keeping Children and Families Safe Act of 2003 (P.L. 108-36)

Enacted in 1974, the Child Abuse Prevention and Treatment Act (CAPTA) has been the key federal legislation to support states and communities in their efforts to prevent, identify, and address child abuse and neglect. The Keeping Children and Families Safe Act of

2003 amends and extends CAPTA’s original goal of child safety to focus on child well-being and permanency. Among its provisions, the new law requires states to establish referral mechanisms to the EIP for children under age three involved in substantiated abuse and neglect cases.

The EIP referral provision responds to national indicators that are drawing attention to young children’s needs, including:

- data revealing that most children in the child welfare system are very young, have high rates of developmental delay and disability, and are often not linked to

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- the EIP.<sup>5</sup>
- standards by the American Academy of Pediatrics that recommend that children in foster care receive a developmental evaluation as early as possible.<sup>6</sup>
  - recommendations of the National Institute of Medicine that all children under age three in the protective services system should be referred to the EIP.<sup>7</sup>
  - research showing that children with disabilities are three times more likely to be maltreated than children without disabilities<sup>8</sup>
  - scientific evidence that early intervention can reduce the harm caused by abuse or neglect.<sup>9</sup>
  - recent trends in child welfare law and practice to focus on children's well-being and permanency, including the Adoption and Safe Families Act of 1997 (ASFA), which makes children's health and safety paramount concerns in child protective proceedings and its regulations that require states to address the medical, educational, and mental health needs of children in foster care.<sup>10</sup>

While ASFA set new timeframes and expectations for achieving permanency, the law did not address how to sustain permanency. By requiring states to develop policies and procedures to link abused and neglected children to the EIP, CAPTA's referral provision opens the door to a system of services that can strengthen and stabilize vulnerable families. Additionally, it offers permanency decision makers a tool to understand a child's needs and a caregiver's capacity to meet those needs.

### **The Early Intervention Program**

The early intervention law entitles eligible children under age three

Public Law 108-36 requires states to have:

"provisions and procedures for referral of a child under the age of 3 who is involved in a substantiated case of child abuse or neglect to early intervention services funded under part C of the Individuals with Disabilities Education Act;" §106(2)(A)(xxi)

and their parents to many services including:

- physical, occupational, and special therapies
- psychological testing
- special instruction
- adaptive technology devices such as wheelchairs and hearing aids
- nursing services
- nutrition counseling
- transportation
- family support services<sup>11</sup>

National research confirms that most children in foster care can meet the eligibility standards, which require evidence of developmental disabilities and delays<sup>12</sup> or a physical and mental condition with a high probability of resulting in delay such as severe attachment disorders and fetal alcohol syndrome.<sup>13</sup>

The early intervention law also permits biological, adoptive, and foster parents to receive family support services, including training, counseling, support groups, home visits and special instruction to enhance their child's development.<sup>14</sup> The regulations allow states to provide respite care—a critical service for those families caring for a child with a disability in or at-risk of entering foster care. If a child is found eligible for the EIP, the child's parent, evaluator, and service coordinator collaboratively develop an individualized family service plan (IFSP) that

serves as a blueprint for services under the EIP.<sup>15</sup> Eligible children are assigned a service coordinator who ensures service providers communicate and collaborate and who can partner with child welfare workers, often relieving their workload.

### **Referral to the Early Intervention Program**

Referral is the first step in accessing the EIP. Many states have toll-free hotlines to refer a child suspected of having a disability or developmental delay to the EIP and nearly all states maintain web sites and publish materials to explain the referral process.<sup>16</sup> While anyone can make a referral, early intervention law requires states to have a referral mechanism for primary referral sources including hospitals, physicians, and social service providers such as child welfare caseworkers and day care providers. Primary referral sources must make a referral no more than two working days after identifying the child.<sup>17</sup> Once the early intervention lead agency receives a referral, it must appoint an initial service coordinator, and within 45 days, help the family obtain a comprehensive, multidisciplinary evaluation of the child's level of functioning, and convene a meeting to develop the IFSP.<sup>18</sup>

CAPTA's referral requirement addresses a significant barrier to early intervention services. The requirement is critical since caregivers and caseworkers often do not identify abused or neglected children as having developmental delays and many of these children lack a stable relationship with an adult who can observe their development over time and advocate on their behalf.<sup>19</sup> Additionally, unlike other children who are referred to the EIP by their pediatrician, abused and neglected children often lack a medical home.<sup>20</sup> Once the EIP door is opened, other hurdles must be overcome to ensure that children in fos-

ter care are evaluated and actually receive needed services.<sup>21</sup> The requirement of parental consent can be a barrier that arises in the post-referral stage. Addressing issues of consent at the referral stage can help parents understand how the EIP can meet their child's needs and support permanency goals, perhaps facilitating the consent process and the timely receipt of services if the child is found eligible.

### **Strategies to Ensure Referral to the EIP**

Judges, lawyers, and advocates for children involved in substantiated cases of abuse or neglect have a critical role in helping their clients arrive at the front door to the EIP, and navigating the system once inside. When a child is found eligible for EI services, permanency decision makers and advocates can use the EIP to promote child attachment to a caregiver, observe caregiver capacity to meet the child's specific needs, and integrate a child's needs and permanency plan. All those involved with abused or neglected children can use the EIP to promote permanency. The stress of caring for a child with a disability strains family stability. Research confirms that early intervention services can reduce the risk of health problems and address or ameliorate the developmental delays found among abused and neglected young children.<sup>22</sup> The EIP can help caregivers manage the stress of parenting, help recruit and retain foster and adoptive families, stabilize placements, and support reunification.

**What judges can do.** As the central decision maker in every child protection proceeding with broad authority to order services to promote a child's healthy development, the court can promote a steady focus on the developmental needs of abused or neglected young

children. Judges can write court orders to obtain information about a child's health and developmental needs, ensure referral to the EIP, and order parents to cooperate with the EIP. At review hearings, judges can monitor that referrals are actually made and that eligible children and caregivers actually receive entitled services. They also can inform parents that participation in the referral process and the EIP can help permanency decision makers better know their willingness and capacity to meet the needs of their child. In several states, judicial leadership brings together parties and professionals to ensure all young children are referred to the EIP to determine eligibility for services and the court receives information about the child's needs and caregiver's capacity to meet those needs.<sup>23</sup> For example:

- In several New York counties, judges assign Court Appointed Special Advocates (CASA) to cases involving children under age five to aid referral to the EIP and monitor the referral process. Some family court judges in New York routinely order that every foster child under age three be referred to the EIP.
- In Miami, Florida, Judge Cindy Lederman, as the administrative judge of the juvenile court, pioneered a project to develop a court-based comprehensive evaluation and intervention program. Children age one to five receive assessments of their cognitive, language, social, and emotional development. Additionally, Judge Lederman writes court orders for all children to receive Early and Periodic Screening Diagnostic and Treatment (EPSDT) services, and if appropriate, referrals to the EIP.

**What lawyers and children's advocates can do.** Lawyers and advocates for children should gather information about a child's risk for

developmental delay and disability and refer every client under age three to the EIP to determine eligibility for services. Where reunification is a permanency goal, they should collaborate with attorneys for agencies and parents' attorneys to inform parents of the benefits of the EIP and facilitate parental consent should the child be found eligible for services. This responsibility is underscored by the American Bar Association Standards for Practice for Lawyers Who Represent Children in Abuse and Neglect Cases. The Standards direct lawyers to independently investigate a child's social service, psychiatric, and medical records; attend case conferences concerning the child; and access entitlements to medical, mental health, and education services.<sup>24</sup> The Standards also require attorneys representing a child with special needs to ensure the child receives appropriate services to address physical, mental, and developmental disabilities.

- In New York City, the Kathryn A. McDonald Education Advocacy Project assigns attorneys to work closely with other attorneys, caseworkers, biological and foster parents and coordinators from the New York City Early Intervention Program to ensure appropriate referrals to the EIP and that children receive evaluations and timely services. The attorneys also train and consult on the EIP to the staff of the New York City Legal Aid Society as well as to New York City caseworkers and CASAs.

**What parents' lawyers can do.** Parents' lawyers can aid referrals to the EIP by explaining to their clients how the EIP can promote reunification and help parents meet their child's needs. As early as possible, parents' lawyers should introduce the EIP, obtain parental consent to services, and if necessary, be pre-

## Strategies at Your Fingertips

### Bringing abused or neglected children to the Early Intervention door:

- Refer every child under age three to the EIP.
- Ask ongoing questions about a child's health and development.
- Inform the child's caseworker about the EIP and need for referral.
- Inform the initial EI service coordinator, and if the child is found eligible, the ongoing service coordinator, about permanency goals.

### Ensuring children get inside the Early Intervention door:

- Work with the EI official, the child's caseworker, and the parent's attorney to get parental consent for the EIP.
- Work with the parent's attorney to help the parent view the EIP as a positive program that can help the parent understand the child's needs and possibly aid reunification efforts.
- If the parent refuses to cooperate with consent for evaluation or services, request a court order for parental cooperation.
- When necessary, advocate for the EI official to designate the foster parent or an available relative as the surrogate parent whenever possible and appropriate.
- Ensure that case planning, court orders, and permanency decision making reflect information from a child's EI screens and evaluations.
- Create monitoring and referral mechanisms to ensure that EIP services are provided.

pared to help the parent appoint a surrogate for EIP decision making. When appropriate, they should inform the court and the caseworker of the parent's willingness to consent and participate in the EIP and provide advocacy at service planning meetings so parents receive services to enhance their caregiving. Additionally, they should advocate that visitation orders include opportunities for the parent to participate in EI services with the child.

### Monitoring and Tracking Strategies

The reality of life for abused and neglected children—where caseworkers and attorneys change, and children move from placement to placement—requires that EIP referral protocols include specialized monitoring and tracking mechanisms. For example, in

Suffolk County, New York, a collaborative effort between Suffolk County Departments of Health Services and Social Services provides home visits every six months by public health nurses to children age birth to 13 years to ensure their health and well-being. For children under age six, the nurse conducts a developmental screening and refers eligible children under age three to the county Part C Early Intervention Program. Reports of visits and referrals are sent directly to the foster care division of the county Department of Social Services and to the court, ensuring a link to decisionmakers.<sup>25</sup> Other states are using public health nurses to ensure that children involved in the child welfare system receive screening, treatment and follow-up services.<sup>26</sup>

## Next Steps

Attorneys and advocates also play a role in helping states draft referral mechanisms to the EIP for children under age three involved in substantiated cases of abuse and neglect. State policies must truly open the door for all young children in, or at-risk of entering foster care. The simplest approach is for states to require automatic referral to the EIP for every child under age three with a substantiated abuse or neglect case. Some states have drafted protocols to refer children involved in child protection proceedings to the EIP, emphasizing the specific role and responsibilities expected of child welfare caseworkers and EIP staff and provisions to promote information sharing.<sup>27</sup> By fully implementing CAPTA's directives and incorporating the lessons from successful models, states can ensure its most vulnerable children receive needed early intervention services that promote healthy development and permanency.

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## Endnotes

1. 20 U.S.C. § 1431 (2000); 34 C.F.R. Part 303 (2000).

2. Pub. L. 108-36 § 106(b)(2)(A)(xxi)(2003).

3. For an extensive overview of the physical and developmental needs of infants in foster care, see Silver J, B. Amster, & T. Haecker, eds.. *Young Children and Foster Care*. Baltimore: Paul H. Brookes Publishing Co, 1999; See also U.S. General Accounting Office (GAO). *Foster Care: Health Needs of Many Young Children are Unknown and Unmet (GAHS-95-114)*. Washington DC:

Governmental Affairs Office (GAO), 1995; American Academy of Pediatrics (AAP), Committee on Early Childhood, Adoption and Dependent Care. "Policy Statement: Developmental Issues for Young Children in Foster Care." *Pediatrics* 106, 2000, 1145-1150.

4. American Psychological Association (APA). "Resolution on the Maltreatment of Children with Disabilities." *APA Monitor* 34(4), February 2000, 49; Sullivan P.M. & J. F. Knutson. "Maltreatment and Disabilities: A Population-Based Epidemiological Study." *Child Abuse & Neglect* 24, 2000, 1257-1274.

5. U.S. General Accounting Office, 1995; AAP, 2000, 1145-1150; Wulczyn F.H., K.B. Hislop & B.J. Harden. "The Placement of Infants in Foster Care." *Infant Mental Health Journal* 23, 2002, 454-475.

6. AAP, 2000.

7. National Research Council and Institute of Medicine Committee on Integrating the Science of Early Child Development. *From Neurons to Neighborhoods: The Science of Early Childhood Development*. Jack Shonkoff & Deborah Phillips, eds. Washington D.C.: National Academy Press, 2000.

8. APA, February 2003; Sullivan & Knutson, 2000.

9. National Research Council, 2000.

10. Pub. Law 105-89, Statute 2115-2135 (1997) (codified as amended in scattered sections of 42 U.S.C.).

11. 20 U.S.C. §1431 (2000); 34 C.F.R. Part 303 (2000); 34 C.F.R. §303.23 (2000).

12. Over half experience developmental delays, which is four to five times the rate found among children in the general population. See Silver et al. 1999.

13. For eligibility requirements, see 34 C.F.R. § 303.16 (a)(1)-(2) (2000). The regulations also permit states to include infants and toddlers who are at-risk of having substantial developmental delays if early intervention services are not provided. 20 U.S.C. § 303.16 (a)(2)(b). States that choose to invoke the at-risk category may use well-known biological and environmental factors including low birthweight, nutritional deprivation, and a history of abuse and neglect in determining risk. 20 U.S.C. § 303.16 n.2.

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14. 34 C.F.R. § 303.12 (d)(3) (2000).

15. 34 C.F.R. § 303.40 (2000).

16. www.NECTAC.org

17. 34 C.F.R. § 303.321 (d)(2)(ii) (2000).

18. 34 C.F.R. § 303.321 (e)(2) (2000).

19. Studies nationwide reveal that caregivers and caseworkers identify very few children in the child welfare system as having developmental delays. Halfon, N. et al. "Health Status of Children in Foster Care: The Experience of the Center for the Vulnerable Child." *Archives of Pediatrics & Adolescent Medicine* 149, 1995, 386.

20. Silver et al., 1999.

21. For a complete discussion of the barriers to the EIP services for children in foster care, see Dicker, S. & E. Gordon. "Early Intervention and Early Childhood Programs: Essential Tools for Child Welfare Advocacy." *Clearinghouse Review* 34, 2001, 727.

22. National Research Council, 2000.

23. For descriptions of best practices and model programs that link young children in foster care to the EIP and early intervention services see Dicker, S., E. Gordon & J. Knitzer. *Improving the Odds for the Healthy Development of Young Children in Foster Care*. New York: National Center for Children in Poverty, 2001.

24. American Bar Association Standards of Practice for Lawyers who Represent Children in Abuse and Neglect Cases, Canon C-2, C-4 (1996).

25. Dicker et al., 2001.

26. Dicker et al., 2001. The article describes the use of public health nurses in Utah and California.

27. For example, New York State Office of Children and Family Services has drafted protocols to refer children in foster care to the EIP (on file with the Permanent Judicial Commission on Justice for Children).