

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1040 Session of  
1997

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SAINATO AND VAN HORNE, MARCH 25, 1997

REFERRED TO COMMITTEE ON EDUCATION, MARCH 25, 1997

AN ACT

1 Amending the act of December 19, 1990 (P.L.1372, No.212),  
2 entitled "An act providing for early intervention services  
3 for infants, toddlers and preschool children who qualify;  
4 establishing the Interagency Coordinating Council and  
5 providing for its powers and duties; and conferring powers  
6 and duties upon the Department of Education and the State  
7 Board of Education, the Department of Health and the  
8 Department of Public Welfare," further providing for  
9 intervention services for infants, toddlers and eligible  
10 young children with disabilities; expanding the membership of  
11 the Interagency Coordinating Council; further providing for  
12 the expenditure of certain appropriations; and making  
13 editorial changes.

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

16 Section 1. Sections 102, 103, 104, 105(c), 106, 301, 304(c)  
17 and 501 of the act of December 19, 1990 (P.L.1372, No.212),  
18 known as the Early Intervention Services System Act, are amended  
19 to read:

20 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] with disabilities 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] with disabilities attain the age of beginners.

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

(4) Assist the families of [handicapped] infants and toddlers with disabilities 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[, ] and toddlers with disabilities and their families and eligible young children.

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

#### 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

1 school district board of directors for admission to the  
2 district's first grade under 22 Pa. Code § 11.15 (relating to  
3 admission of beginners).

4 "Council." The Interagency Coordinating Council established  
5 in section 106.

6 "Early intervention services." Developmental services which  
7 meet all of the following:

8 (1) Are provided under public supervision.

9 (2) Are designed to meet the developmental needs of [a  
10 handicapped infant, toddler] an infant or toddler with  
11 disabilities or eligible young child in any of the following  
12 areas:

13 (i) Physical development.

14 (ii) Cognitive development.

15 (iii) Sensory development.

16 (iv) [Language and speech] Communication development  
17 or alternative communication development.

18 (v) [Psycho-social] Social-emotional development.

19 [(vi) Self-help skills.]

20 (vi) Adaptive development.

21 (3) [Are] For eligible infants and toddlers and their  
22 families, are developed to meet the requirements of this act,  
23 including, but not limited to, the following:

24 (i) Family training.

25 (ii) Social work services, including counseling and  
26 home visits.

27 (iii) Special instruction.

28 (iv) Speech pathology and audiology.

29 (v) Occupational therapy.

30 (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.]

(xii) For infants and toddlers with disabilities, other services required by Part H, such as nutrition, service coordination services and transportation and related costs that are necessary to enable an infant or toddler and the infant's or toddler's family to receive early intervention services.

(xiii) Vision services.

(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.], nutritionists, family therapists, orientation and mobility specialists, pediatricians and other physicians.

(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.

1 Compliance includes procedural safeguards and free  
2 appropriate public education, including related services and  
3 individualized education programs.]

4 (6) For eligible young children, are developed to  
5 include specialized instruction in compliance with this act  
6 and Part B. Compliance, for this purpose, includes the  
7 procedural safeguards and free appropriate education,  
8 including related services and individualized education  
9 programs, which are necessary to insure that compliance is  
10 effected. These developmental services shall include, but not  
11 be limited to, the following related services:

12 (i) Family training.

13 (ii) Social work services, including counseling and  
14 home visits.

15 (iii) Speech pathology and audiology.

16 (iv) Occupational therapy.

17 (v) Physical therapy.

18 (vi) Psychological services.

19 (vii) Medical services, for diagnostic or evaluation  
20 purposes only.

21 (viii) Early identification, screening and  
22 assessment services.

23 (ix) Assistant technology devices and services.

24 (7) Are provided in the least restrictive natural  
25 environment appropriate to the child's needs. Infants,  
26 toddlers and eligible young children who will be served in a  
27 non-home-based setting must, to the maximum extent consistent  
28 with the child's abilities, receive early intervention  
29 services in a setting with nonhandicapped children. Each  
30 infant's or toddler's IFSP and each eligible young child's

1 IEP must contain the recommended service option placement and  
2 the rationale for why it represents the least restrictive  
3 environment.

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

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

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

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

19 "IEP." Individualized Education Program.

20 "IFSP." Individualized Family Service Plan.

21 "Individuals with Disabilities Education Act." The  
22 Individuals with Disabilities Education Act (Public Law 91-230,  
23 20 U.S.C. § 1400 et seq.).

24 ["Handicapped infants and toddlers."] "Infants and toddlers  
25 with disabilities." Individuals ranging in age from birth to  
26 two years of age, inclusive, who need early intervention  
27 services for any of the following reasons:

28 (1) They are experiencing developmental delays, as  
29 defined by regulations of the Department of Public Welfare  
30 and as measured by appropriate diagnostic instruments and

1 procedures in any of the following areas: cognitive  
2 development, sensory development, physical development,  
3 [language and speech development, psycho-social development  
4 or self-help skills] communication development, social-  
5 emotional development or adaptive development and are based  
6 on informed clinical opinion and procedures.

7 (2) They have a diagnosed physical or mental condition  
8 which has a high probability of resulting in developmental  
9 delay under paragraph (1). This paragraph applies to  
10 conditions with known etiologies and developmental  
11 consequences. Examples of these conditions include Down  
12 syndrome; other chromosomal abnormalities; sensory  
13 impairments, including vision and hearing; inborn errors of  
14 metabolism; microcephaly; severe attachment disorders,  
15 including failure to thrive; seizure disorders; and fetal  
16 alcohol syndrome.

17 ["IEP." Individualized Education Program.

18 "IFSP." Individualized Family Service Plan.]

19 "Informed clinical opinion." Documentation by a number of  
20 qualified personnel, as contained in the definition of "early  
21 intervention services," and is based on direct observation as  
22 well as other knowledge of the child when there are no  
23 standardized measures or the procedures are not appropriate for  
24 the child's level of functioning or manifestation of the  
25 disability or development areas. The multidisciplinary team will  
26 then determine, through its informed clinical opinion, that a  
27 child is eligible for early intervention services.

28 "Lead agency." For early intervention services to eligible  
29 children from birth to two years of age, inclusive, the  
30 Department of Public Welfare; for early intervention services to

1 eligible young children, the Department of Education.

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

7 "MAWA agency." An agency that enters into a mutually agreed-  
8 upon written arrangement with the Department of Education.

9 "Mutually agreed-upon written arrangements." An agreement  
10 between the Department of Education and intermediate units,  
11 school districts or other public or private agencies to provide  
12 early intervention services that comply with the early  
13 intervention regulations of the State Board of Education and  
14 early intervention standards of the Department of Education.  
15 These agreements may include memoranda of understanding pursuant  
16 to approved plans submitted to the Department of Education by  
17 intermediate units and school districts.

18 "Part B." Part B of the [Education for the Handicapped]  
19 Individuals with Disabilities Education Act (Public Law 91-230,  
20 20 U.S.C. § 1411 et seq.), as it applies to preschool children.

21 "Part H." Part H of the [Education for the Handicapped]  
22 Individuals with Disabilities Education Act (Public Law 91-230,  
23 20 U.S.C. § 1471 et seq.).

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

28 Section 104. State interagency agreement.

29 (a) Interagency agreement.--The Department of Education, the  
30 Department of Health and the Department of Public Welfare shall



1 enter into and maintain a State interagency agreement to enable  
2 the State and local agencies serving infants, toddlers and  
3 eligible young children [who are handicapped] with disabilities  
4 to establish working relationships that will increase the  
5 efficiency and effectiveness of their early intervention  
6 services. The agreement shall outline the responsibilities of  
7 those State and local agencies and shall implement a coordinated  
8 service delivery system through local interagency agreements.

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

- 11 (1) Responsibilities of State and local agencies.
- 12 (2) Eligibility determination and referrals.
- 13 (3) Establishment of local agreements.
- 14 (4) Fiscal responsibilities of the agencies.
- 15 (5) Dispute resolution between agencies.
- 16 (6) Payor of last resort.
- 17 (7) Maintenance of effort.
- 18 (8) Administrative management structure.
- 19 (9) Establishment and maintenance of local interagency  
20 coordinating councils, which shall include, but not be  
21 limited to, parents and private providers and which shall be  
22 authorized to advise and comment on the development of local  
23 interagency agreements for their specified geographic area  
24 and to communicate directly with the Department of Education,  
25 the Department of Health, the Department of Public Welfare  
26 and the council regarding the local interagency agreement and  
27 any other matters pertaining to this act. At least 50% of the  
28 members of the local interagency coordinating council shall  
29 be parents of infants or toddlers with disabilities or  
30 eligible young children with disabilities who are 12 years of

1 age or younger. The local interagency coordinating councils  
2 are the duly recognized local body for the purposes of this  
3 act.

4 (10) Plans by the Department of Health, the Department  
5 of Public Welfare and the Department of Education to work  
6 together to develop a coordinated system of [case management]  
7 service coordination.

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

11 Section 105. Other duties of State agencies.

12 \* \* \*

13 (c) Annual reports.--By [July] October 31, the Department of  
14 Health, the Department of Public Welfare and the Department of  
15 Education shall submit annual reports to the council on the  
16 status of early intervention services during the preceding  
17 [calendar] fiscal year. These reports shall be used as the basis  
18 for the report submitted by the council under section 106(f)(4).

19 Section 106. Council.

20 (a) Establishment.--The Interagency Coordinating Council is  
21 established as the duly recognized council for the purposes of  
22 this act. The council shall consist of [15] a minimum of 25  
23 voting members but shall not exceed 30 voting members appointed  
24 by the Governor. The council shall serve as the council required  
25 by the [Education of the Handicapped Act Amendments of 1986  
26 (Public Law 99-457, 100 Stat. 1145)] Individuals with  
27 Disabilities Education Act. The term of office of the voting  
28 members shall be three years, except for the cabinet officers or  
29 their designees who shall serve as long as they are in office.

30 (b) Membership.--The membership of the council shall consist

1 of the following:

2 (1) [Three] Six parents of [handicapped] infants,  
3 toddlers or eligible young children with disabilities,  
4 including minority parents, with knowledge of or experience  
5 with programs for infants, toddlers or eligible young  
6 children with disabilities.

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

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

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

15 (4) Two public education providers of programs for  
16 eligible young children with disabilities.

17 [(5) One member from the General Assembly.]

18 (5) Two members of the General Assembly, one from the  
19 Senate and one from the House of Representatives.

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

22 (7) [One] Two county mental health/mental retardation  
23 [administrator or designee] administrators.

24 (8) One individual who is directly involved in personnel  
25 preparation.

26 (9) The Secretary of Education or a designee.

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

28 (11) The Secretary of Health or a designee.

29 [(12) As ex officio members, who shall not have voting  
30 privileges: a representative of the Developmental

Disabilities Planning Council and members appointed by the chair of the council.]

(12) The Insurance Commissioner or a designee.

(13) Two private providers of programs for infants and toddlers with disabilities.

(14) One public or private provider of child care services.

(15) Members at large, not to exceed seven, chosen to represent diverse interests who have knowledge of or experience with programs for infants, toddlers and eligible young children with disabilities.

(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. The council may advise and assist the lead agency for Part H

1 and the Department of Education regarding the development of  
2 and implementation of appropriate services for children ages  
3 birth to age of beginners.

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

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

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

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

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

19 (4) To prepare and submit, with the cooperation of the  
20 Secretary of Education, the Secretary of Health and the  
21 Secretary of Public Welfare, an annual report during the  
22 month of [September] December to the Governor and the  
23 Majority and Minority Chairmen of the Education Committee of  
24 the Senate and the Education Committee of the House of  
25 Representatives. This report shall include the number of  
26 programs being provided by intermediate units, school  
27 districts and public and private providers, including Head  
28 Start; the number of children being served; the status of  
29 compliance with State regulations and standards; descriptive  
30 information on the programs; information on personnel needs;

1 any suggested changes in State statutes and regulations  
2 governing these programs; any information the United States  
3 Secretary of Education may require; and any other information  
4 the council deems appropriate.

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

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

8 (g) Compensation of members.--The members shall serve  
9 without compensation but shall be reimbursed for reasonable  
10 costs incurred, including costs related to child care[.], except  
11 that compensation shall be provided to a member of the council  
12 if such member is not employed or must forfeit wages from other  
13 employment when performing official council business. Employees  
14 of the Commonwealth or any of its political subdivisions are  
15 prohibited from receiving compensation except for reasonable  
16 costs incurred.

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

22 Section 301. Requirements.

23 A Statewide system of coordinated, comprehensive,  
24 multidisciplinary, interagency programs shall be established and  
25 maintained by the Department of Health, the Department of Public  
26 Welfare and the Department of Education to provide appropriate  
27 early intervention services to all [handicapped] infants[, ] and  
28 toddlers with disabilities and their families and to eligible  
29 young children. The system shall include the following minimum  
30 components:

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

8           (2) An assurance that appropriate early intervention  
9 services are available to all eligible [handicapped]  
10 infants[,] and toddlers with disabilities and their families  
11 by September 1, 1991, and to all eligible young children by  
12 July 1, 1991.

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

18           (3) A timely, comprehensive, multidisciplinary  
19 evaluation of the strengths and needs of each infant and  
20 toddler and eligible young child, the needs of the family and  
21 the resources and priorities to assist appropriately in the  
22 development of the infant, toddler and eligible young child  
23 with a disability.

24           (4) For all [handicapped] infants[,] and toddlers with  
25 disabilities and their families, an IFSP in accordance with  
26 Part H, including [case management] service coordination  
27 services in accordance with the service plan.

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

30           (6) A comprehensive child-find system, including a

1 system for making referrals to service providers that  
2 includes timelines and provides for the participation by  
3 primary referral sources.

4 (7) A public awareness program focusing on early  
5 identification of [handicapped] infants[,]  
6 and toddlers with disabilities and eligible young children.

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

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

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

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

20 (12) A system for compiling data on the numbers of  
21 [handicapped] infants[,]  
22 and toddlers with disabilities and  
23 their families and eligible young children in need of  
24 appropriate early intervention services; the number of  
25 infants, toddlers and their families and eligible young  
26 children served; and the types of services provided.

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

28 (14) An exit criteria, which provides procedures for a  
29 child to exit from early intervention services. This exit  
30 plan must address both the needs of the child who has



1 attained age of beginners as well as the child who, at any  
2 age between birth and age of beginners, no longer meets the  
3 eligibility criteria. If a child has been successful in  
4 obtaining age-appropriate behavior and abilities, the fact  
5 that the child participated in early intervention services  
6 may not be communicated to the school district unless the  
7 parent so chooses, nor may it be considered as a rationale  
8 for placement in public school age special education classes.  
9 If the child does not meet exit criteria and the child's IEP  
10 or IFSP demonstrates that the child will benefit from  
11 services which can be provided only through special  
12 education, nothing in this act shall prevent that placement.  
13 In either case, transition services shall be provided to the  
14 child and the child's parents.

15 (14.1) Policies and practices are adopted to ensure  
16 meaningful involvement of traditionally underserved groups,  
17 including minority, low-income and rural families, in the  
18 planning and implementation of all the requirements of this  
19 act and to ensure that such families have access to services  
20 within their local areas.

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

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

27 Section 304. Administration by Department of Education.

28 \* \* \*

29 (c) Public welfare.--The Secretary of Education shall  
30 provide for the transition of eligible children, including

1 [handicapped] infants and toddlers with disabilities, who, prior  
2 to their third birthday, received services under Part H. The  
3 Secretary of Education is authorized to accept responsibility  
4 pursuant to delegation from the Secretary of Public Welfare  
5 under section 303(c) for providing early intervention services  
6 to children less than three years of age. The Secretary of  
7 Education is authorized to delegate responsibility to the  
8 Secretary of Public Welfare for providing services for certain  
9 children over the age of three.

10 \* \* \*

11 Section 501. Regulations and standards.

12 Regulations of the State Board of Education, 22 Pa. Code Ch.  
13 14, published at 20 Pa.B. 3339 (June 16, 1990), and the  
14 Department of Education Standards, 22 Pa. Code Ch. 342,  
15 published at 20 Pa.B. 3357 (June 16, 1990), as approved by the  
16 State Board of Education, governing the provision of early  
17 intervention services, shall take effect upon their  
18 reaffirmation by the State Board of Education. [The definition  
19 of eligible young child in those regulations and standards is,  
20 with regard to the reference to being two years and nine months  
21 of age by September 1, superseded by the definition of eligible  
22 young child in this act.] Should the State Board of Education  
23 propose to make any revisions in the regulations at the time of  
24 reaffirmation and at any time thereafter, the regulations shall  
25 be subject to the provisions of the act of July 31, 1968  
26 (P.L.769, No.240), referred to as the Commonwealth Documents  
27 Law, the act of October 15, 1980 (P.L.950, No.164), known as the  
28 Commonwealth Attorneys Act, and the act of June 25, 1982  
29 (P.L.633, No.181), known as the Regulatory Review Act.

30 Section 2. This act shall take effect immediately.