



HB 2082 – Assessing childcare for children with developmental delay & disabilities

Problem: Children with disabilities are refused enrollment in childcare at high rates, or only allowed enrollment on condition families provide 1:1 support, as needed.

- **Related problem:** Children with disabilities are frequently asked to leave programs at high rates.

Consequences: Parents struggle to work and provide for their families; children lack access to inclusive learning and play opportunities.

How the situation plays out ...

PRIVATE SETTINGS:

Legally, private childcare providers (unless a religious entity) cannot refuse children because they are disabled. Under the Americans with Disabilities Act, Title III, businesses open to the public must provide people with disabilities equal access to goods or services that they offer. However, the standard is they must make “reasonable modifications,” and that is open to interpretation.

Families and providers also must figure out modifications on their own; they may not have access to technical support or know where to turn for support.

Families also emphasize that the problem is not limited to the 0-5 years. It remains a problem throughout K-12, with after-school programs and summer daycare camps.

PUBLIC SETTINGS:

The legal bar is higher for publicly funded programs. Those must comply with Section 504 of the Rehabilitation Act of 1973. If it is a local or state government program, then it must also comply with the Americans with Disabilities Act, Title II.

For school districts and charter schools, the Individuals with Disabilities Education Act comes into play for preschool special education services.

Section 504:

Prohibits discrimination by public or private entities that receive federal financial assistance.

- Section 504 provides that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of any entity that receives federal financial assistance or be subjected to discrimination by such entity.

- Federal financial assistance includes grants, loans, and reimbursements from federal agencies, including assistance provided to early childhood programs.
 - “Private” programs are subject to Section 504 if they use federal grants
- US Health and Human Services and US Education Department Section 504 regulations require recipients such as schools to provide equal educational opportunities for children with disabilities in the most integrated setting appropriate to the child’s needs.

Americans with Disabilities Act, Title II

The ADA has six parts. Under Title II, state and local governments must provide people with disabilities an equal opportunity to benefit from all their programs, services, and activities.

- No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of such services, programs, or activities of a public entity, or be subjected to discrimination by such entity.
- Title II applies to the services, programs, and activities of all state and local governments throughout the United States, including their early childhood programs.
- Title II further requires public entities to provide services in the most integrated setting appropriate to the needs of individuals with disabilities.
- Integrated settings are those that provide individuals with disabilities opportunities to live, work, and receive services in the greater community, like individuals without disabilities.

Head Start, Child Care and Development Block Grants

The Head Start Act and the Child Care and Development Block Grant Act have provisions and requirements that support high-quality inclusive opportunities for children with disabilities.

- By statute, Head Start and Early Head Start programs must make at least 10% of their enrollment opportunities available to children with disabilities. (Note: this is not a cap; 10% is the floor.)
- The Child Care and Development Block Grant Act requires states to develop strategies for increasing the supply and quality of childcare services for children with disabilities.
- Both Head Start and the Child Care and Development Block Grant have income requirements

Early Childhood Education and Assistance Program (ECEAP)

Our state-funded early learning program is subject to ADA Title II and Section 504. Also, all children with IEPs are eligible for ECEAP, with no income requirement. But many more children are eligible for ECEAP than there are slots, so there is a system to weight applicants.

- Because of the weighted point system, many children with IEPs cannot access ECEAP unless they also meet income requirements
- Communication about eligibility for ECEAP is uneven; families of children with disabilities report they do not know about the program or their child's eligibility, or they were diverted from applying to the program
- ECEAP is not routinely brought up as a consideration in special education placement, even though it is one of the few inclusive options available to families
- If children are placed in ECEAP, the local school district is still responsible for providing individualized instruction or related supports. This can be done through push-in support and coordinating with ECEAP staff on instruction. ECEAP programs do not receive special education funds, though in recent years the state created a complex needs funds so ECEAP providers can better support children with delay or disabilities, or children affected by trauma.

Seattle Preschool Program (SPP)

This program – only available in the city of Seattle – is also subject to Section 504 and ADA, Title II. SPP offers a highly regarded SPP-plus program designed to include children with and without disabilities, but slots are limited. Under federal law, though, all SPP programs must be open to children with and without disabilities and must offer children with disabilities an equal opportunity to benefit. It is not clear while all SPP sites are not designed for inclusion.

Early Supports for Infants and Toddlers

ESIT services include family supports, which in turn can include information about transitioning into preschool or finding suitable childcare. It is critical that ESIT providers are familiar with disability law around inclusive early learning so they can help educate parents about their child's rights under Section 504 and the ADA, or their child's right to the least restricted environment under the Individuals with Disabilities Education Act.

Providers should also be aware of the research linking inclusion and social and emotional skill development. Studies show a decline when young children are taught these skills but are then placed into segregated or separate settings.

School districts

School districts are subject to Section 504; ADA, Title II; *and* the Individuals with Disabilities Education Act (IDEA). IDEA supports equal educational opportunities for eligible children with disabilities ages 0 through 21.

- IDEA Part C requires that appropriate early intervention services are made available to all eligible infants and toddlers with disabilities in natural environments, including the home, and community settings in which children without disabilities participate, to the maximum extent appropriate, factoring in each child's routines, needs, and outcomes.
- IDEA part B requires special education and related services to be made available to all children with disabilities ages 3 through 21, to the maximum extent appropriate, in the least restrictive environment (LRE) factoring in an individual child's unique strengths and needs.
- LRE further requires a continuum of placement options be available to best meet the diverse needs of children with disabilities and presumes that the first placement option considered for each child with a disability is the regular classroom the child would attend if he or she did not have a disability.
- Thus, before a child with a disability can be placed outside of the regular educational environment, the full range of supplementary aids and services that could be provided to facilitate the child's placement in the regular classroom setting must be considered.
- Each local education agency must ensure that a free appropriate public education (FAPE) is provided in the least restricted environment to every child with a disability in its jurisdiction, regardless of whether it operates public general early childhood programs. If a district doesn't have an integrated or inclusive program, staff must support students in the appropriate community placement.
- This could include providing special education and related services in public or private general early childhood or preschool programs, Head Start and Early Head Start programs, ECEAP, or other community-based childcare programs.

Washington ranks very low for inclusive opportunities: In the [2021 IDEA report to Congress](#), Washington is bottom four for serving students with disabilities in regular early childhood programs (defined in federal rule as serving 50%-plus students without disabilities). That varies quite a bit by school district, though, with some districts serving most students in inclusive settings and others serving very few.

The childcare situation

Families we support report difficulty accessing childcare across the board – in public and private settings.

While school districts offer developmental programs, but these are not childcare. Generally, these are 2- to 3-hour programs. Even if every school district offered an inclusive developmental preschool, families would STILL struggle with childcare.

Access to community preschools that run 6-hour programs (also called school-day programs) would be helpful for many families. But others would still need childcare to cover a complete workday.

Private providers need support making their programs accessible and inclusive.

What parents report:

After-school care programs routinely discriminate against children with developmental disabilities and don't allow them to come without a 1:1 aid, which the schools do not provide.

For preschool, the default is usually a segregated, short-day program run by the school district. Families struggle to find both inclusive preschool and any childcare.

While some childcare providers may be unprepared or resistant to enroll children with disabilities, others are very open to children with disabilities but need resources. These can include adjustments to the physical space, the curriculum, additional materials, understanding of inclusive practices like universal design for learning, or familiarity with de-escalation and behavior support, or ability to use techniques like collaborative problem-solving.

State licensing and quality standards need to reinforce inclusive practices and spaces.

Challenges to be aware of with HB 2082 approach:

A typical analysis will check whether/how many providers there are in an area and how many slots they offer. In the case of children with disabilities, analysis needs to be done on how many children with disabilities are served in these childcare settings and how often they are refused care or asked to leave.

The family survey needs to be thoughtfully done to include communities of color and immigrant communities. Many families of children with disabilities are socially isolated, and that could impact the survey.

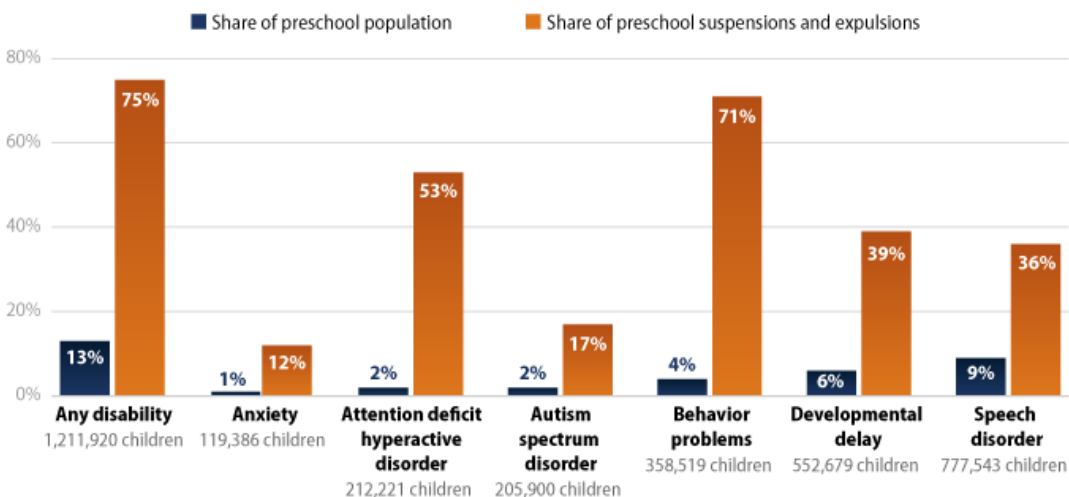
Helpful papers/articles

- U.S. Department of Health and Human Services & U.S. Department of Education Policy Statement on Inclusion of Children with Disabilities in Early Childhood Programs, September 14, 2015. <https://www2.ed.gov/policy/speced/guid/earlylearning/joint-statement-full-text.pdf>
- The Child Care Crisis Disproportionately Affects Children with Disabilities. Centers for American Progress. <https://www.americanprogress.org/article/child-care-crisis-disproportionately-affects-children-disabilities/>
- Suspensions are Not Support. Centers for American Progress. <https://www.americanprogress.org/article/suspensions-not-support/>

Helpful visuals

FIGURE 1

Children with disabilities as share of preschool population and share of preschool suspensions and expulsions

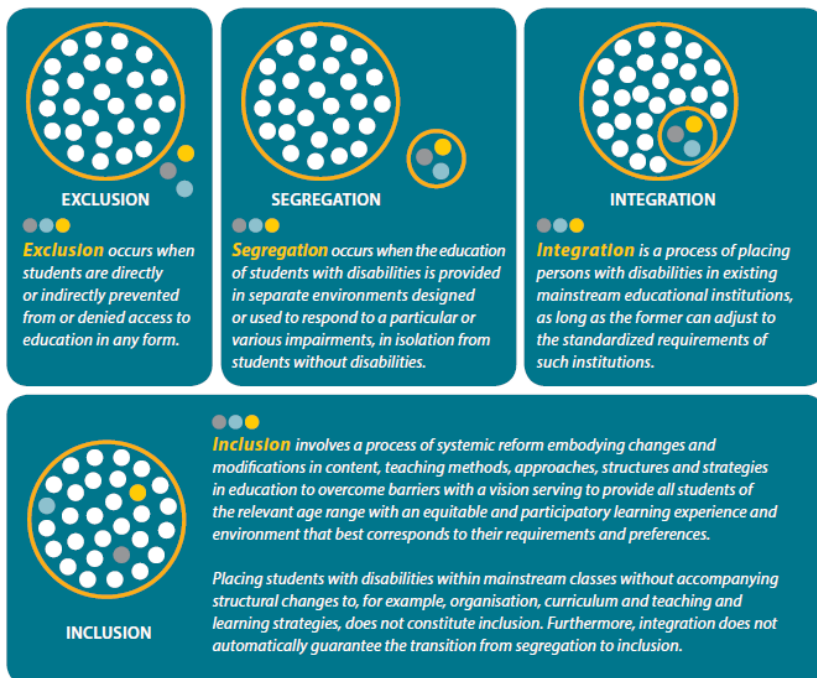


Source: Authors' calculations based on data from United States Census Bureau, National Survey of Children's Health (U.S. Department of Commerce, 2016), available at <https://www.census.gov/programs-surveys/nsch/data/nsch2016.html#NSCH>.



What is inclusion?

Educational environments for students with disabilities range from a complete denial of formal educational services to equal participation in all aspects of the education system. For this paper, we describe the educational experiences of students with disabilities using the following four categories:



Source for legal information in this paper: U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES & U.S. DEPARTMENT OF EDUCATION POLICY STATEMENT ON INCLUSION OF CHILDREN WITH DISABILITIES IN EARLY CHILDHOOD PROGRAMS, September 14, 2015.