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The Richest Entitlement: Early Intervention for Infants and Toddlers in Foster Care

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Infants and toddlers in foster care are America's most vulnerable children. They are placed in foster care by court order due to abuse or neglect. Children under age three constitute over 1/3 of children entering care and they remain in care longer and return to care more frequently than other children. They are also four to five times more likely to have a developmental delay than their age peers. Thus, securing services for these children is a vital task for all those who work with young children.

In 1986, Congress reauthorized the Education for All Handicapped Children's Act (now called the IDEA) and created two new programs that guaranteed special services for children from birth to age five. While the 3-5 program was merely a downward extension of the previous law (extending the law's free appropriate public education—FAPE—requirement to that age group), the birth to 3 program created a new initiative aimed at addressing or ameliorating developmental delays for infants and toddlers. That program, known as Early Intervention (EI) or Part C of the IDEA, provides the richest entitlement for infants and toddlers. No group is more in need of its wide array of services than young children in foster care.

The Profile of Infants and Toddlers in Foster Care

Several studies confirm that infants and toddlers living in foster care are far more likely to have developmental delays and serious medical problems than other children. Over 40% of young children in foster care were born prematurely or low-birth weight, factors that increase the likelihood of serious medical problems and developmental disabilities. Indeed, a majority have been exposed prenatally to drugs and/or alcohol, further exacerbating threats to

their healthy development. Moreover, children in foster care are moved on average, at least three times during each period in foster care and this instability makes children far less likely to have an attachment figure — a caring adult who knows them well, can read their cues and advocate on their behalf. Having an attachment figure is a foundation for optimal development. Thus, it is not surprising that research has found that young children in foster care are 4-5 times more likely to have developmental delays than their age peers.

The Program

Due to the high prevalence of developmental delay and the construct of the EI program, the marriage between the two should be ideal. Indeed, the EI program is a two-generational program providing entitlement services to the child and his or her parents, whether biological, adoptive, relative or foster. This two-generational approach helps ensure that lessons learned by the child are reinforced at home and that the caregiver receives needed support for caring for a vulnerable child.

Young children are entitled to a vast array of services under EI including typical services (i.e. speech, physical and occupational therapy), as well as less common services such as nursing, nutrition and transportation. Parents can access family support services including training, counseling and home visits. These services are provided at home or in a natural setting such as day care, where infants and toddlers typically are found. Perhaps, most comforting to families, children do not need to have a specific diagnostic classification, but only be developmentally delayed to qualify for services.

The richness of EI makes it ideal for children in foster care who are far more likely to have developmental delays than their age peers. Historically, due to inconsistent parenting and medical care, as well as frequent moves of children in care, children in foster care were less likely to be referred to EI than other children. Indeed, most referrals are made by parents or physicians. This changed with the enactment of

The Child Abuse and Prevention Treatment Act (CAPTA) in 2003.

Referral

CAPTA is the bedrock legislation concerning child protective services. Prior to its 2003 reauthorization, studies around the country indicated that few infants and toddlers in foster care were being referred to vital EI services. Given the high prevalence of delays among children in foster care, failure to refer had devastating consequences. Thus, Congress was persuaded that referrals needed to be mandatory. The 2003 CAPTA legislation mandated that a child with a substantiated case of abuse or neglect must be referred to EI. This mandate was repeated in the 2010 CAPTA reauthorization. A parallel provision now appears in the Part C IDEA (EI) legislation. Additionally, to insure that these referrals actually occur, Congress requires states to collect data on the number of children eligible for referral and the number of children actually referred. The federal government will monitor these data collection efforts.

Securing Services

While CAPTA insures that children in foster care get in the EI door through referral, an additional barrier remains that may prevent receipt of services for these children. The problem is that parental consent must be obtained in order for a child to have: a multidisciplinary evaluation, an Individualized Family Services Plan (IFSP) and the provision of initial services. It is important to note that both federal and New York regulations define "parent" broadly, to include guardians, relatives and others who live with the child. Some children in foster care still will not have a "parent" under this broad definition, or may have a parent who is unknown or unavailable. In the latter instance, EI may, in consultation with child welfare services, assign a surrogate parent to represent the child in the EI process.

Recent federal law has allowed the courts to appoint an educational decision-maker in the event that no parent or surrogate parent can be appointed. These are rare instances. In most cases, a parent as broadly defined can be found, or the parent can be reassured about the need for EI and the fact that EI services will not harm or stigmatize the child. Occasionally; however, a foster parent will not cooperate with EI or denies the existence of the delay, when the child desperately needs services for his or her healthy development. It is for those rare circumstances that courts are empowered to appoint an educational decision-maker.

Transition from EI to Preschool Special Education

Congress requires a "smooth and effective" transition from EI under Part C, to Preschool Special Education (PSE) under Part B, of the IDEA. Due to the nature of foster care, this transition is especially problematic for children in foster care.

Federal regulations target this process specifying that 90 days prior to each child's third birthday, the state lead agency must:

- notify the appropriate local education agency (LEA) that the child will soon reach the age of eligibility for services under Part B;
- convene a transition conference, with the consent of the family, to discuss any services their child may receive under Part B; and
- establish a transition plan to be placed in the child's IFSP

In addition, an Individualized Education Plan (IEP) must be developed and implemented by the child's third birthday.

The Problem of the EI-PSE Gap

For some children, particularly those in foster care, the transition may not go smoothly. This results in a gap in services. Problems with the EI-PSE transition exist nationwide. New York City (NYC) provides an example of barriers to a smooth transition.

Under New York law, the EI service coordinator performs the duties of the lead agency. In NYC, the service coordinator, an individual assigned to each EI case, is responsible for assisting children and their families in coordinating evaluations and assessments, gaining access to the services listed on their IFSPs, referring children to the school district's Committee on Preschool Special Education ("Committee"), arranging for transition conferences, and establishing transition plans, when appropriate. Once a child is referred to PSE, the Committee will record the referral and mail out a packet of information, including a list of free evaluation sites, to the family. While it identifies sites and funds evaluations, the family is responsible for consenting to and obtaining the evaluation. Once the evaluation is completed, it will be filed with PSE, an IEP will be created and, with the consent of the child's parents, all services enumerated will be implemented.

This is a complex system, so it is not surprising that many children, particularly those in foster care, are not receiving timely services,

thereby creating a gap between EI and PSE. There are two major reasons for this gap. First, some EI service coordinators fail to refer children to PSE as required. If the Committee, (which in NYC does not engage in its own outreach), is not informed of a child's potential need for services, it will not mail the required information to the parents or foster parents, who also may be unaware of the transition process. Since foster children move frequently, this problem is compounded. When this happens, services end upon the child's third birthday.

Second, a gap may be experienced because many parents, particularly foster parents, may be unaware of their responsibilities throughout the process. Foster parents are not given any special training on IDEA. They may receive the PSE packet, but may not realize that in NYC, parents are required to secure an evaluation and without that evaluation, the process will be halted. For children in foster care, as discussed above, parental consent for an evaluation may be difficult to obtain. These problems can be addressed early to ensure a smoother transition and prevent loss in services by: better training of EI Service Coordinators, requiring the PSE Committees to engage in outreach, providing parent education, and using community resources to dispense information and guidance.

Conclusion

No group of children requires the richest entitlement—the EI program—more than infants and toddlers in foster care. All who work with these children must ensure that they are referred and served by the EI program to address and ameliorate their propensity for developmental disabilities. All involved should work to ensure a smooth transition to preschool special education for these vulnerable children. Only by securing vital EI services for all children in foster care, can we improve the odds for their future healthy development.

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