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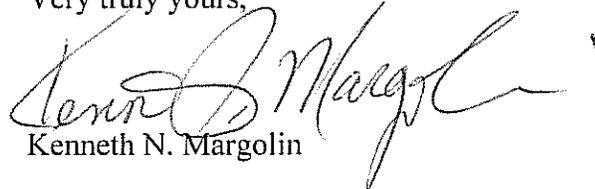
November 5, 2014

Jeffrey Hansen, Chairman
Town of Reading
Community Planning and Development Commission
Town Hall, 16 Lowell Street
Reading, MA 01867

Dear Mr. Hansen:

The attached letter to Reading Town Counsel, J. Raymond Miyares, dated November 5, 2014, which includes the Supplemental Affidavit of Robert F. Littleton, Jr., is part of and incorporated into, Criterion Child Development, Inc.'s site plan review submission to the CPDC.

Very truly yours,



Kenneth N. Margolin

KNM/JF

Cc: J. Raymond Miyares, Esq.
John V. Fernandes, Esq.

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November 5, 2014

J. Raymond Miyares, Esq.
Town of Reading Town Counsel
Miyares and Harrington, LLP
50 Leonard Street, Suite 3
Belmont, MA 02478

Re: Criterion Child Enrichment, Inc./186 Summer Ave., Reading, MA

Dear Attorney Miyares:

This letter will answer your questions, presented via email on October 29, 2014, regarding Criterion's early childhood intervention program planned for 186 Summer Ave., Reading. I will also respond to Attorney Art Kreiger's letter to you, dated October 30, 2014, in which he attempts to argue that Criterion's program will not serve a primary or dominant educational purpose.

As will be seen in my response, Attorney Kreiger presents a narrow view of the education of the infants and young children with developmental delays, who will benefit from early intervention programs such as Criterion's, a view that exhibits a profound misunderstanding of such education, and early intervention, and which perverts settled Massachusetts case law.

Answers to your questions

Question 1

Please describe in detail all of Criterion's proposed activities to be conducted at the property. (As you respond, please be aware that identifying the statutory framework under which the organization operates does not sufficiently describe the organization's activities at the Summer Ave. location, such that a determination can be made as to whether the organization engages in educational activities or whether those activities are a primary purpose of the proposed use of this site.)

Answer to Question 1

The information you seek is provided in detail in the Supplemental Affidavit of Robert F. Littleton, Ed.D., (attached to this letter, and labeled "A"). While I will not repeat here, what Dr. Littleton details in his affidavit, I want to highlight the main points.

All early intervention programs (since they are established pursuant to Part C of IDEA – more on that in a subsequent paragraph – bear certain similarities) provide services to eligible children, both in their homes and at early intervention facilities, such as the one planned for Summer Ave. As shown in the drawing of architect, Marc Maxwell, AIA (Exhibit "1" to Dr. Littleton's Supplemental Affidavit), the planned structure will have four classrooms in the "new two-story addition," and six offices in the "existing renovated home."

The classrooms will be used for two purposes: (1) the various activities that are specially designed to help the infants and toddlers develop the cognitive, communication, imitation, social, fine and gross motor, and other skills, that are integral to their education, and which will give them a head start on gaining those skills, which they may not otherwise obtain due to their developmental delays; and (2) for parent training sessions, at which parents receive instruction on methods to best educate their children at home, and to deal with the stresses and difficulties that can be posed by their children's disabilities.

The offices will be used by Criterion's personnel, to complete the paperwork necessary to their work with the children and families, and to help coordinate outside services for the children and families they serve. The various early intervention staff will rotate in and out of the offices, as they return from providing services in the homes, or are in between providing services at the facility. In addition, there will be three to five full-time administrative staff. All the Criterion personnel using the offices, will be fulfilling tasks essential to the primary educational purpose of the Reading program. This is not a centralized facility for other Criterion Child Development, Inc. programs. They are thus no different than administrative offices essential to the educational functioning of a college, school, or any other use that is educational under the Dover Amendment. The courts have recognized the obvious, that elements of a program necessary to support the dominant educational purpose, are part and parcel of the educational use (see, for example, *Radcliffe College v. City of Cambridge*, 350 Mass. 613, 618 (1966) – parking, housing, feeding and housing of the students and employees of an educational institution "is within the broad scope of the educational powers of the institution....").

While I agree with your comment that identifying the early intervention statutory framework does not sufficiently describe what will occur at Criterion's program, once those details are provided, as they are in Dr. Littleton's Supplemental Affidavit, the

statutory framework is a critical piece of determining the primary educational purpose of the program – more on that point in the response to Attorney Kreiger's letter.

Question 2

Please describe in detail the educational activities that Criterion anticipates for the proposed use and the proportion of those activities relative to its other activities.

Answer to Question 2

The educational activities that Criterion anticipates for the proposed use, are the activities described in detail in Dr. Littleton's Supplementary Affidavit. One hundred percent of the proposed use of the facility will be educational in nature. The facility will be used either for the classroom early intervention activities and parent training, or the office use that directly supports, and is essential to, those activities, and the coordination of services for the children and families served. If one wanted to play games with the concept of "education," one might claim that the participating children without developmental delays, are engaging more in recreational activities than educational ones, since they do not require the specific activities to develop their cognitive and other educational skills. Such an argument would ignore the benefit to the non-disabled children of learning to interact with "different" children, those with disabilities. Even if, however, that argument was credited, as 75% or more of the children served will have developmental delays, and require the specialized activities in order to learn, the educational component is still obviously primary, and would continue even if the non-disabled children were not present.

As will be set forth in more detail in the response to Attorney Kreiger's letter, the fact that early intervention services involve multiple disciplines, does not render its primary purpose non-educational. Mr. Kreiger's counting angels on the head of a pin approach, listing the various disciplines that go into educating very young children with developmental delays, and concluding that because the list includes professionals who are not labeled "teachers" or "educators," early intervention is not educational, simply ignores the entire purpose of the statute, and the elements of educating very young children with developmental delays, who require the specialized activities to develop their learning skills, and skills essential to learning. It also ignores Massachusetts case law.

Question 3

Please explain what Criterion means when it describes a child to be "at risk," and whether some or all of such children are covered by the ADA.

Answer to Question 3

The early intervention statute does not provide much guidance as to what children are "at risk" for developmental delay. The statute merely states that "[T]he term "at-risk infant or toddler" means an individual under 3 years of age who would be at risk of experiencing a substantial developmental delay if early intervention services were not provided to the individual." 20 U.S.C.A. § 1432. Criterion takes its definition from the Massachusetts Department of Public Health *Early Intervention Operational Standards, July 2013* (available online at: <http://www.mass.gov/eohhs/gov/departments/dph/programs/family-health/early-intervention/>). The *Operational Standards* set forth detailed criteria to determine which children are "at risk." The risk factors can arise from the infant's or toddler's own health, or familial circumstances. The portions of the *Early Intervention Operational Standards* setting forth the "at risk" factors are attached to this letter, and labeled "B."

Some, but likely not all, of the children "at risk" for developmental delays, would be covered by the Americans with Disabilities Act, 42 U.S.C. §12101, *et seq.* The Act defines "disability" to mean (in its most relevant part):

- (A) a physical or mental impairment that substantially limits one or more major life activities of such individual;
 - (B) a record of such an impairment; or
 - (C) being regarded as having such an impairment (as described in paragraph (3)).
- (2) Major life activities
- (A) In general

For purposes of paragraph (1), major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

(B) Major bodily functions

For purposes of paragraph (1), a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(3) Regarded as having such an impairment

For purposes of paragraph (1)(C):

(A) An individual meets the requirement of "being regarded as having such an impairment" if the individual establishes that he or she has been subjected to an action prohibited under this chapter because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

42 U.S.C. §12102

As can be seen in the *Early Intervention Operational Standards*, "at risk" children will include those who have chronic feeding difficulties (*Standards*, p. 14), inadequate or disturbed social relationships, depression or indiscriminate aggressive behavior (*Id.*), and other diagnosable conditions that affect the toddler's or infant's major life functions as defined in the ADA. Other children "at risk," however, will not definitively exhibit impairments that currently impair major life activities or bodily functions as defined in the ADA. Those children would not be covered.

As a practical matter, that some children served by Criterion in Reading, will be "at risk" as opposed to already diagnosed as developmentally delayed, should make no legal difference to the significance of the ADA to the program.¹ Criterion, as a program that exists to provide services to children with disabilities, has standing to bring legal action as a result of discrimination that impedes, or attempts to impede, Criterion's clients with disabilities from access to its services. *Franklin Building Corp. v. City of Ocean City*, 946 F.Supp. 1161, 1166 (D.N.J. 1966); *Hovsons, Inc. v. Township of Brick*, 89 F.3d 1096, 1100, fn 2 (3d Cir. 1996).

Response to Attorney Art Kreiger's letter dated October 30, 2014

Without saying it explicitly, Attorney Kreiger seeks to persuade you that because toddlers and infants with developmental delays or at risk to develop them, require the assistance of various non-teacher professionals, to develop and learn essential skills, they are not

¹ According to Dr. Littleton, the percentage of children in Criterion's program, who are "at risk" for developmental delay, but do not yet exhibit developmental delay, will be less than 3.0%.

really receiving education. As noted earlier in this letter, Mr. Kreiger's argument profoundly misunderstands and mischaracterizes what early childhood intervention is all about. His letter omits the findings of the Congress that enacted Part C of IDEA, that informs us that early intervention is all about education. No mention is made in Attorney Kreiger's letter, of the definition of "Early Intervention services" in the Department of Public Health *Early Intervention Operational Standards* that note the educational nature of early intervention services. Mr. Kreiger provides no hint that more than thirty years ago, the Massachusetts appellate courts rejected the artificial distinction he seeks to make, between formal education, and the non-traditional, non-classroom services that go into the provision of education to many individuals with disabilities.

Congress made the following findings when it enacted the early intervention program – Criterion's Reading program will be such a program governed by the laws and standards cited in this letter and my original letter to you:

Congress finds that there is an urgent and substantial need—

- (1) to enhance the development of infants and toddlers with disabilities, to minimize their potential for developmental delay, and to recognize the significant brain development that occurs during a child's first 3 years of life;
- (2) to reduce the educational costs to our society, including our Nation's schools, by minimizing the need for special education and related services after infants and toddlers with disabilities reach school age;
- (3) to maximize the potential for individuals with disabilities to live independently in society;
- (4) to enhance the capacity of families to meet the special needs of their infants and toddlers with disabilities; and
- (5) to enhance the capacity of State and local agencies and service providers to identify, evaluate, and meet the needs of all children, particularly minority, low-income, inner city, and rural children, and infants and toddlers in foster care.

20 U.S.C. §1431

When the regulations to Part C of IDEA, were finally enacted on September 6, 2011, U.S. Secretary of Education, Arne Duncan, said the following about early childhood intervention:

As everyone who works in education understands, one of the most important things we can offer children is a high-quality early learning experience that

prepares them for kindergarten This is true for all children—but it's especially important for infants and toddlers with disabilities to have access to high-quality early intervention services that prepare them to successfully transition to preschool and kindergarten. The Part C regulations will support the Education Department's commitment to the goal of preparing more children with high needs with a strong foundation for success in school and beyond.

U.S. DOE OSEP's Part C of the IDEA website: <http://idea.ed.gov/part-c/search/new>

Enhancing developmental skills, aiding children in their education by helping them to minimize the need for special education, maximizing their potential to live independently, sound as if they were taken from the pages of Massachusetts settled case law ("the process of developing and training the powers and capabilities of human beings" and preparing persons "for activity and usefulness in life" is educational – *Fitchburg Housing Authority v. Board of Zoning Appeals of Fitchburg*, 380 Mass. 869, 875 citing *Mt. Hermon Boys' School v. Gill*, 145 Mass. 139, 146 (1887). Just as the fact that recipients of the development of various skills training are adults, does not minimize the educational nature of their program (*Fitchburg Housing Authority, supra*, at 873), neither does the fact that those receiving skills development are infants and toddlers, lessen the educational nature of the services provided.

The Department of Public Health, in its *Early Intervention Operational Standards*, describes early intervention services as "developmental services designed to meet the needs of each eligible infant or toddler and the needs of the family related to enhancing the infant or toddler's development in the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development" (*Operational Standards*, p. 6). The purpose of early intervention services could hardly be more educational, save for a traditional classroom in which reading, writing, and arithmetic was taught – infants and toddlers obviously do not learn in traditional classrooms.

The fact that infants and toddlers with developmental delays require the services of a wide variety of professionals in order to achieve "physical development, cognitive development, communication development, social or emotional development, or adaptive development," hardly negates the educational nature of the services they receive. The artificial distinction contrived by Attorney Kreiger, attempting to view piece-meal, the various types of developmental services delivered to early intervention infants and toddlers, and trying to declare them non-educational, was rejected long ago by the Massachusetts courts:

... The board [of Appeals] now argues that ... at the very most education supplied to them is an equal objective with their rehabilitation. But "education" and

"rehabilitation" do not denote functions so distinct that the master could be required to quantify them relative to each other. They are not mutually exclusive The [broad definition in the *Mt. Hermon Boys' School* case, supra] definition seems to us still serviceable despite the new jargon (e.g. "rehabilitation," therapeutic") which has accompanied attempts to create new disciplines....

Harbor Schools, Inc. v. Board of Appeals of Haverhill, 5 Mass.App.Ct. 600, 604-605 (1977).

The definitions for Part B of IDEA, relating to special education services for children ages 3 – 22, contains the following definition of "related services:

The term "related services" means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program of the child, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.

20 U.S.C. §1401

In other words, the provision of various "developmental, corrective, and other supportive services" as set forth in §1401, if necessary to "assist a child aged 3 – 22, with a disability, to benefit from special education" are part and parcel of that education. They may not be denied on the grounds that they are not "educational." At a typical Massachusetts residential special education school for children with severe developmental disabilities, all of the services will be provided in order to allow the children to "benefit from special education." It would pervert the core of special education and twist the law beyond recognition, to suggest that such a school for children with severe developmental disabilities, does not serve a primary educational purpose, because it provides – and provides heavily – the whole range of corrective, developmental, and other supportive services, which if viewed in an outer space vacuum, might not be considered "educational."

Note that the list of services provided that are "related to enhancing the infant or toddler's development in the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development" (*Early Intervention Operational Standards*, p. 6), are almost identical to the list of services that are part of an older special needs students' education if required to assist him to benefit from such education. One cannot objectively read the relevant Massachusetts case law setting forth the broad nature of education, especially for individuals with disabilities, and rejecting artificial distinctions between "education" and the services by various disciplines required by some persons with disabilities in order to develop skills, and conclude that "enhancing the infant or toddler's development in ... physical development, cognitive development, communication development, social or emotional development, or adaptive development" is anything other than educational.

Attorney Kreiger places great emphasis on the case, *Regis College v. Town of Weston*, 462 Mass. 280 (2013), basing much of his argument on that case. First, as acknowledged by Mr. Kreiger, the *Regis College* case, in stating that a program's educational component must be the dominant purpose, only reaffirmed long-standing law (see, for example, the 1980 case, *Fitchburg Housing Authority v. Board of Zoning Appeals of Fitchburg*, supra, at 874). Most significantly, *Regis College v. Town of Weston*, more supports than detracts from the conclusion that Criterion's educational purpose is the dominant purpose. The Court held, again reaffirming established Massachusetts law, that:

A proposed use of land or structures may have an educational purpose notwithstanding that it serves nontraditional communities of learners in a manner tailored to their individual needs and capabilities ... Accordingly, we have concluded that the Dover Amendment applies to certain facilities for the disabled or the infirm, notwithstanding that the education afforded by such institutions differed markedly from that offered by 'traditional' academic institutions [citation omitted].

Regis College v. Town of Weston, supra, at 285-286.

Conclusion

In determining whether Criterion's early intervention services to infants and toddlers, pursuant to Part C of IDEA, will be a dominant educational use, we do not have the right to ignore the findings of Congress, the definition of the Massachusetts lead early intervention agency, or the holdings of the Massachusetts appellate courts. We should not ignore the words of the United States Secretary of Education, as he describes the principle educational purpose of early intervention programs, of which Criterion's 186 Summer Ave., Reading, program, will be one.

LAW OFFICE OF KENNETH N. MARGOLIN, P.C.

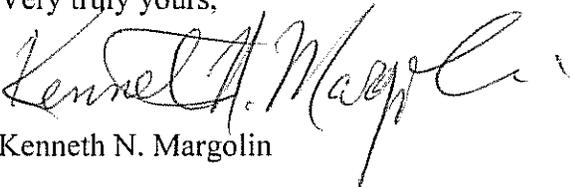
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The opponents to Criterion's, Reading plans, undoubtedly wish that early intervention programs had a different goal, one not so strongly educational, and that Massachusetts courts did not interpret the Dover Amendment so broadly. They may wish, if the case proceeds sufficiently far, to urge the Supreme Judicial Court to roll back its longstanding jurisprudence, using early intervention as the red line. The SJC is highly unlikely to accept such an invitation. Until and unless that day comes, however, the Town of Reading is bound to follow the law as it is. I urge you to follow that law, and to advise your clients that the primary purpose of Criterion's early intervention program will be "educational" under the Dover Amendment, and entitled to the law's protection.

Please do not hesitate to call if you have any questions or would like any additional information.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kenneth N. Margolin". The signature is written in a cursive, flowing style.

Kenneth N. Margolin

KNM/JF

Cc: John V. Fernandes, Esq.
Arthur P. Kreiger, Esq.

EXHIBIT A

Supplemental Affidavit of Robert F. Littleton, Jr.

I, Robert F. Littleton, Jr., swear that the following facts are true:

1. I am the President of Criterion Child Enrichment, Inc. Criterion has signed a Purchase and Sales Agreement with the owner of 186-190 Summer Avenue, in Reading, to purchase the property, and plans to operate on the property, an Early Childhood Intervention program.
2. This Affidavit is submitted to supplement my original Affidavit, dated October 7, 2014, in which I explained the educational purpose of Early Intervention programs, including the Early Intervention program Criterion plans to operate at 186-190 Summer Ave., Reading. In this Affidavit, I will answer Town Counsel, J. Raymond Miyares' question regarding the activities that will take place on the Reading property, once Criterion opens the program. Other questions posed by Attorney Miyares, are answered by Criterion's attorney, Kenneth N. Margolin, in his letter, to which this Supplemental Affidavit is attached.
3. My relevant background is described at Attachment 2 to this Supplemental Affidavit.
4. In order to provide a context for the activities that will take place at Criterion's Summer Ave., Reading program, I refer to architectural drawings prepared by Marc A. Maxwell, AIA, showing Criterion's proposed floor plans for the property. The drawings are Attachment 1 to this Supplemental Affidavit.

5. Criterion's early intervention services, and the administrative work essential to those services will take place in the "New 2 Story Addition" (the "addition"), and in the "Existing Renovated Home" (the "main building"), both depicted on Attachment 1.
6. Four classrooms are planned for the addition, two on each floor. Six offices and a conference room are planned for the main building, one office and the conference room on the first floor, and five offices on the second floor.
7. In order to understand the nature and purpose of the activities that will take place in the classroom, it is necessary to understand some basic principles of the way infants and toddlers, and infants and toddlers with developmental delay, learn.
8. All infants and toddlers learn by using their five senses, by engaging in activities, by experiencing cause and effect of their actions, by social interactions, by imitation, and repetition. The period covered by Early Intervention services, ages birth to 3, is normally a time of explosive growth of a child's brain cells and brain structure. These years are thus critical to a child's development, and have major implications for a child's school years and beyond.
9. A child with serious developmental delay, learns in a manner similar to "normal" children; i.e., children without developmental delay, but their learning and acquisition of skills is slower, potentially much slower, depending on the nature and extent of the developmental delay.
10. Early Intervention programs were developed out of scientific research, and a recognition that providing specialized activities and interventions to infants and toddlers aged birth to three, with developmental delays, can give them a better chance to benefit to the extent that their abilities and disabilities allow, from their school years. Early

Intervention can provide lifelong benefit by enhancing the skills of a child with developmental delay, during the crucial first three years of life.

11. The brief overview at paragraphs 7 – 10 of this Supplemental Affidavit, is provided so that the reader can understand that the activities that occur with Criterion’s infants and toddlers with developmental delays, are not mere “recreation” or “play” (although the right kind of “play” can enhance the skills of Criterion’s children). The activities are based upon years of research into the way that children with developmental delays learn, and the types of activities that can best stimulate their physical, cognitive, communication, social, adaptive, and emotional development.

12. Criterion provides early intervention services in the home and at its facilities, as will be the case at its Summer Ave., Reading, program.

13. The children served at the Summer Ave. program, will usually be eighteen months of age or older (i.e., 18 months – 3 years of age).

14. Activities with children, which will usually (with some exceptions, when a parent drops a child off) involve a parent as well as Criterion Early Intervention staff, will take place in the classrooms in the addition. Hours of the program are Monday through Friday, 8:00 a.m. – 4:00 p.m. Staff are free to arrive earlier or leave later, if they wish.

15. Classroom sessions will typically be ninety minutes long. There will be morning sessions, expected to take place between 9:30 a.m. – 11:00 a.m., and afternoon sessions, which are expected to occur between 12:30 p.m. – 2:00 p.m.

16. On most days when the facility is open, two or three of the four classrooms will be in use at the same time during the morning or afternoon sessions.

17. The classroom groups will usually be for eight children per session. As stated earlier in this Supplemental Affidavit, children will be engaged in activities designed to stimulate their cognition, physical, gross and fine motor, communication, social, adaptive, and emotional skills development.

18. While the precise activities to be provided, will vary according to the ages and individual needs of the children in a particular group, the following is a representative description of what will occur in the classrooms during a typical ninety minute group session. During most groups there will be two or three Criterion Early Intervention staff directing the activities during the group sessions:

- (a) A group session is often opened with the toddlers, along with any parents present, in a circle, engaged by the Early Intervention staff, in a song that includes gestures and repetition. The activity is designed to stimulate receptive and expressive communication, by using imitation (the children imitate gestures), and repetition. Participation in a social activity involving interaction with others is also part of the skills acquisition purpose of the activity.
- (b) "Circle time" may be followed by an activity designed to stimulate sensory and motor skills. The toddlers may be engaged, for example, in the use of finger paints to make designs, or various activities on paper.
- (c) For children who require specialized equipment for their skills development, one or more of the classrooms will be equipped with the necessary equipment. For example, for a child requiring encouragement of the development of gross motor skills, equipment to help them navigate stairs may be employed, or sitting equipment that the child pushes using his feet. Swings may be employed, or a

very small trampoline, to aid the child to develop the skill of sensing whole body movements and their effect. Such physical aids are employed only with very close staff supervision.

- (d) An area of the classroom will be set up for the development of fine motor skills, where the children will be engaged in activities such as blocks, building towers, and the like.
- (e) The toddlers will also have the opportunity for imaginative play, with dolls, kitchen sets and other play things.
- (f) Depending on the ages and developmental needs of the children, Criterion Early Intervention staff may direct some or all of the children in the group, in various other activities, for example, activities to help children who need it, in developing early self-care skills.

19. Typically, the Criterion staff working in the classrooms will be certified Early Childhood Intervention teachers. Staff from other disciplines may be in the classrooms as well, depending on the needs of the children in the group. Thus, for example, occupational or physical therapists, speech and language specialists, psychology or social work specialists, may participate – always dictated by the individual needs of children in the group.

20. In addition to being used for the group sessions for the children, classrooms will also be used for parent training sessions. Often, parents who participate in the group sessions, will leave the sessions to spend thirty minutes or more, with Criterion Early Intervention staff in another classroom.

- (a) Parents are shown how to integrate activities relevant to their child's skills development, into the home. Helping parents to engage their children at home, with activities designed to help their child with developmental delays, to develop specific areas in which the child is delayed, is important. The child spends far more time at home than at the Early Intervention center. For a child with developmental delays, engaging the child in targeted activities designed to enhance development, as opposed to random child-oriented activities, can make a significant, positive difference.
- (b) Through group interaction and training from the Criterion Early Intervention personnel, parents are also helped to deal with the difficult physical and emotional stresses that can come with raising a child with developmental delays.

21. By statute, an Early Intervention program exists to serve infants and toddlers ages birth to three, with developmental delays or who are "at risk" for developing developmental delay. According to Department of Public Health statistics for FY 2013, fewer than three (3.0%) percent of infants and toddlers who receive Early Intervention services, are in the "at risk" category, with no diagnosed or observable developmental delay. We would expect a similar level of "at risk" children at the Summer Ave., Reading, program. There are standards for determining when a child is "at risk." Factors may involve the child's own physical situation or history, for example, low birth weight or extended neonatal hospitalization, or the child's family situation, such as evidence of inadequate nutrition or stimulation at home, or parents younger than seventeen years old. The "at risk" status does not rule out observable developmental delay. For many of the children who enter Criterion's program because they are deemed "at risk" for

developmental delay, their developmental delays will evolve to become evident, while they are still receiving early intervention services.

22. Early Intervention program statutes and standards require that Early Intervention services be provided in as “normal” a setting as possible. Thus, as mentioned, many of the services are provided in the home. For the child groups of eight, Criterion tries to include two children from the community who do not have developmental delay and are not at risk for developmental delay. Those children benefit from learning how to interact with “different” children, i.e., children with disabilities. Children with development delay also experience interacting with children without disabilities. Whether or not the goal of 25% of the group consisting of children without developmental delay can be reached for any given group, depends on whether sufficient numbers of parents of children who do not require Early Intervention services in order to develop their early skills, enroll them in Criterion’s groups.

23. When the cause of observable developmental delay has a definitive diagnosis (it is not unusual for there to be serious developmental delay of unknown origin), diagnoses may include conditions such as cerebral palsy, Down Syndrome, birth trauma, and other conditions that may impair a child’s development.

24. The offices in the main building will be used by Criterion’s Early Intervention staff in order to complete the paperwork and administrative work essential to their provision of Early Intervention services. Staff may complete service plans for individual children, make notes of a session in a child’s home, make phone calls to families served, or other care providers, consult with fellow Criterion Early Intervention staff.

25. There will also be three to five full-time staff who will work at the Criterion Summer Ave., Reading program. These will include a Program Director, possibly other managerial personnel, and clerical support staff.

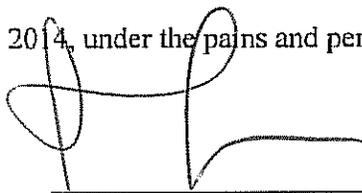
26. One hundred per cent of the office use in the main building, will be for the Summer Ave., Reading program. The offices in the 186 Summer Ave. main building, will not be general offices for other Criterion Child Development, Inc. programs. Their sole use will be to support the Early Intervention educational activities at 186-190 Summer Ave., Reading, Massachusetts.

27. All other portions of the property will be used directly for Early Intervention activities, or to support those activities. The conference room in the main building will be used for staff meetings, staff training, and other meetings related to the work of the program. The playground, as one would expect, will be used to provide outside activities for the children. As with the classroom activities, playground activities will be designed with stimulation of early development of children with developmental delays, in mind.

28. The driveway and parking spaces will be used strictly for the Summer Ave., Reading, program, for parents and staff. It is not a commercial parking lot, nor will it be used for any other purpose.

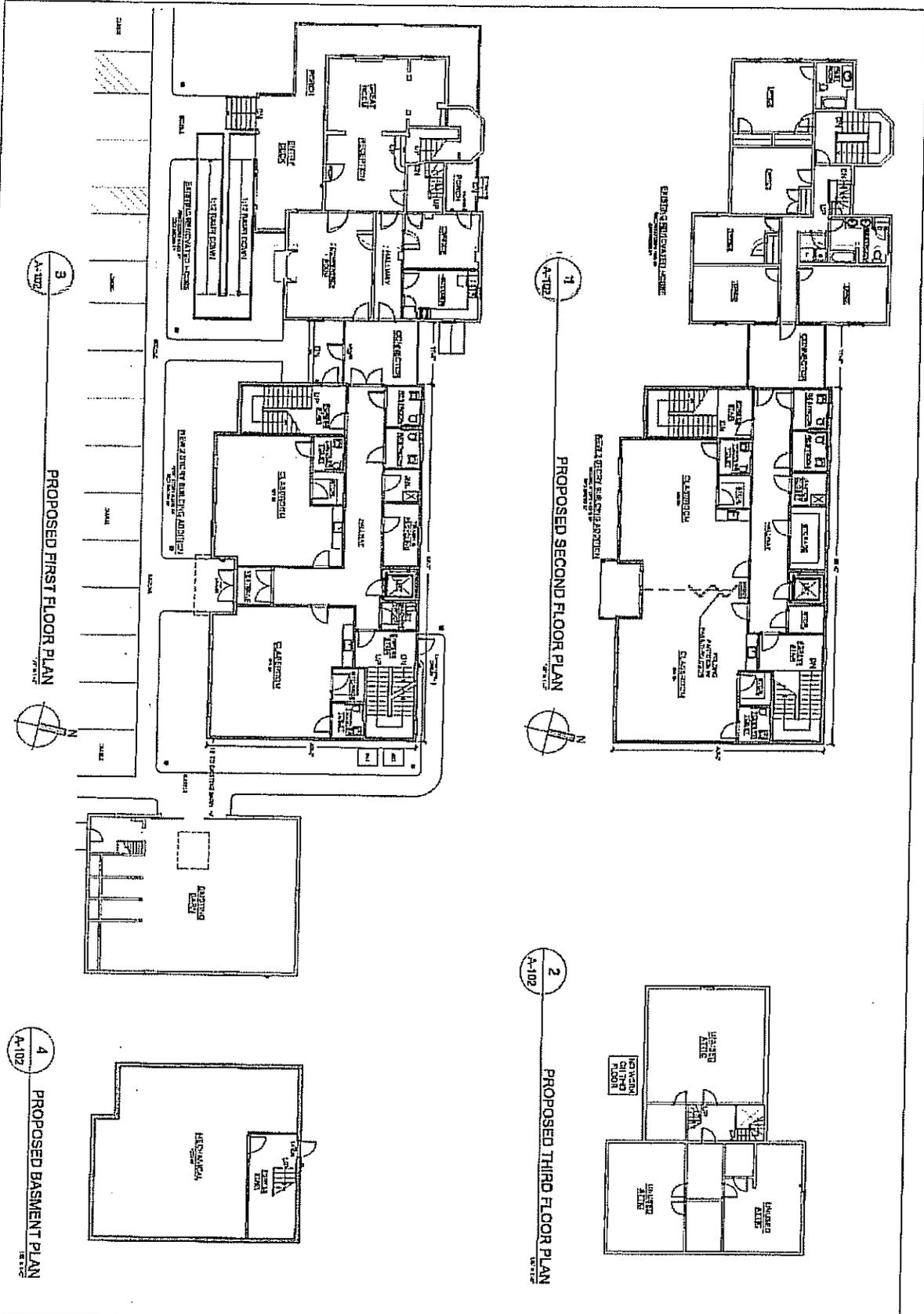
29. All activities that will take place at 186-190 Summer Ave., in Reading, will be Early Intervention activities that are educational, or that directly support, and are essential to, those services.

Signed this 3rd day of November, 2014, under the pains and penalties of perjury.

A handwritten signature in black ink, appearing to read 'R. Littleton, Jr.', written over a horizontal line.

Robert F. Littleton, Jr., Ed.D., President
Criterion Child Enrichment, Inc.

EXHIBIT 1 - Supplemental Affidavit



PROPOSED FLOOR PLANS
 CRITERION READING
 CRITERION EARLY INTERVENTION
 188-190 SUMMER AVENUE
 READING, MASSACHUSETTS 01867

MAXWELL ARCHITECTS, LLC
 PLANNING AND ARCHITECTURE

Scale: 1/8" = 1'-0"
 A-102
 11/20/14

EXHIBIT 2 - Supplemental Affidavit

Affidavit of Robert F. Littleton, Jr.

Summary of Education and Relevant Professional Experience

My educational background includes an M.Ed. from Lesley College, with a major in Severe Special Needs and a minor in Early Childhood Special Education, and an Ed.D. from Boston University, with a major in Special Education.

From 1974 through 1982, I was the Associate Director, and then Director of the Kennedy-Donovan Center for Programs in Early Development, Foxboro, Massachusetts. In addition to serving as the President of Criterion Child Enrichment Inc., I founded, and am the Executive Director of Evergreen Center, Inc., Milford, Massachusetts, a nonprofit corporation providing residential programs and community services for children and adults with developmental disabilities or emotional disturbances. Evergreen Center serves in excess of 260 families in twenty-one locations.

I also founded, and serve as President of BEACON Services, Milford, Massachusetts, a private group of special educators and early childhood professionals experienced in the principals of behavior analysis, and founded and serve as president Human Services Management Corporation, Inc., Milford, Massachusetts, a corporation that provides shared business services, continuing education and management consulting services for nonprofit and proprietary human service providers.

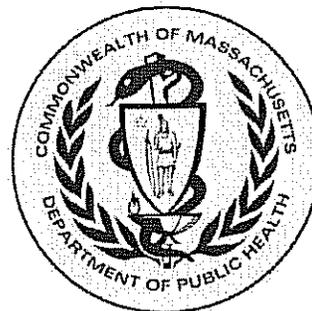
I have presented and written extensively on special education, early childhood intervention and human service management topics.

EXHIBIT B

Massachusetts Department of Public Health

Early Intervention Operational Standards

July 2013



Criteria

The infant or toddler has, at the time of initial and subsequent eligibility determination:

- A diagnosed neurological, metabolic, or genetic disorder, chromosomal anomaly, medical or other disabling condition with documented expectation of developmental delay, or
- vision loss not corrected by medical intervention or prosthesis, or
- permanent hearing loss of any degree.

2. INFANTS AND TODDLERS WITH ESTABLISHED DEVELOPMENTAL DELAY(S)

This category includes infants and toddlers who, during the infancy period, or more commonly in the second year of life, begin to manifest developmental delays, often of unknown etiology.

Criteria

- The infant or toddler's development is at least 1.5 standard deviations below the mean, as measured by the *Battelle Developmental Inventory – 2nd Ed.* (BDI-2), in one or more areas of development, including: physical development (includes gross and fine motor),
- cognitive development,
- communication development (includes expressive and receptive),
- social or emotional development, or
- adaptive development.⁴

Infants and toddlers eligible by Established Developmental Delay will be eligible for one year (12 months) from their last evaluation/assessment to determine eligibility up until, but not on their third birthday.

3. INFANTS AND TODDLERS AT RISK FOR DEVELOPMENTAL DELAY(S)

This category includes:

1. infants and toddlers with a history of prenatal, perinatal, neonatal, or early life events suggestive of biological insults to the developing central nervous system which, either singularly or collectively, increase the probability of later atypical development, and
2. infants and toddlers who are biologically sound but whose early life experience, including maternal and family care, health care, nutrition, opportunities for expression of adaptive behaviors, and patterns of

⁴ For an infant or toddler initially determined eligible by delay utilizing the Michigan Early Intervention Developmental Profile (MEIDP or "Michigan"), the team may continue to utilize this tool to determine eligibility if the infant or toddler was initially determined eligible via the administration of this tool. The infant or toddler would need to demonstrate a 30% delay in one or more areas of development including: physical development (includes gross and fine motor), cognitive development, communication development (includes expressive or receptive), social or emotional development, or adaptive development. Informed clinical opinion may be used if the infant or toddler does not demonstrate a 30% delay. The team must complete a supplemental tool in the area of concern to provide additional information regarding the child's needs.

physical and social stimulation are sufficiently limiting to the extent that they impart high probability for delayed development. Infants and toddlers eligible in the Risk for Developmental Delay category will be eligible for one year (12 months) from their last evaluation/assessment to determine eligibility up until, but not on their third birthday.

Criteria

Four or more of the following risk factors are present:

INFANT AND TODDLER RISK FACTORS

Note 1: Risk factors 1-4 apply only to infants and toddlers who are under 18 months chronological age at the time of the evaluation for eligibility.

Note 2: Birth or medical records are available in the Early Intervention record to substantiate risk factors 1-8. Identification of risk factors 9–12 should be determined by parent perception and written documentation for risk factors 9–12 is kept in the Early Intervention record.

1. Birth weight is **fewer** than 1200 grams (less than 2 pounds 10½ ounces).
2. Gestational age is **fewer** than 32 weeks. Developmental evaluation for eligibility will be based on chronological age, not on adjusted age.
3. NICU admission is **more** than 5 days.
4. Apgar score is **less** than 5 @ 5 minutes.
5. Total hospital stay is **more** than 25 days in 6 months. This does **not** apply to the birth admission of a premature infant. Subsequent admissions to a hospital or the transfer hospital stay after NICU admission will apply toward this total.
6. Diagnosis of Intrauterine Growth Retardation (IUGR) or Small for Gestational Age (SGA).
7. Weight for age, or weight for height. An infant or toddler meets this risk factor if:
 - weight for age or weight for height is less than the 5th percentile or greater than the 95th percentile,
 - Weight for age has **dropped** more than 2 major centiles in 3 months in an infant who is under 12 months of age,
 - weight has dropped more than 2 major centiles in 6 months in a child who is 12 to 36 months of age.

A major centile is defined as the major percentiles (5, 10, 25, 50, 75, 90, 95) on the Physical Growth Chart adopted by the National Center for Health Statistics. The above two measurements should be based on the appropriate growth chart approved by the National Center for Health Statistics.

8. Blood lead levels measures at 5 µg/dl (micrograms per deciliter) or more. An infant or toddler meets this risk factor with a **venous** (not finger stick) blood lead level of 5 µg/dl (micrograms per deciliter) or more.
9. Child has chronic feeding difficulties. An infant or toddler meets this risk factor if any of the following conditions exist over an extended period of time:
 - severe colic,
 - stressful or extremely conflicted feedings,
 - refusal or inability to eat, or
 - Failure to progress in feeding skills.

Evidence of these conditions should be documented in the Early Intervention record and appropriate outcomes and treatment strategies addressed as determined by the family. Note: If an infant or toddler has been diagnosed as Failure-to-Thrive, he/she is eligible under the category of Established Condition.

10. Insecure attachment/interactional difficulties. An infant or toddler meets this risk factor if he/she appears to have **inadequate or disturbed social relationships, depression, or indiscriminate aggressive behavior** and the **parent perceives this as an issue**. Note: In most cases, insecure attachment in infants and toddlers is evidenced by behavior such as persistent failure to initiate or respond to social interactions, fearfulness that does not respond to comforting by caregivers, and indiscriminate sociability.
11. Suspected central nervous system abnormality. Suspected CNS abnormalities may include but are not limited to the following:
 - Infection: meningitis, encephalitis, maternal infection during pregnancy (TORCH infections: toxoplasmosis, other [syphilis and HIV], rubella, CMV, herpes);
 - Trauma: intracranial hemorrhage, subdural hematoma, epidural hematoma;
 - Metabolic: Profound and persistent hypoglycemia, seizures associated with electrolyte imbalance, profound and persistent neonatal hyperbilirubinemia greater than 20 mg/dl [milligrams per deciliter], acidosis;
 - Asphyxia: prolonged or recurring apnea, ALTE [apparent life threatening event], suffocation, hypoxia, meconium aspiration, near-drowning;
 - In utero drug exposure: nicotine, ethanol, THC, cocaine, amphetamine, phenytoin, barbiturates, and other.

This category may also include the following clinical findings:

- Abnormal muscle tone;
- Persistence of multiple signs of less than optimal sensory and motor patterns, including under-reaction or over-reaction to auditory, visual, or tactile input.

12. Multiple trauma or losses. An infant or toddler meets this risk criterion if he/she has experienced a series of traumas or extreme losses that may impact on the care and/or development of the infant or toddler, for example, multiple hospitalizations or multiple placements outside the home.

PARENT RISK FACTORS

NOTE #1 – Regarding children in the care of someone other than the infant’s or toddler’s birth/biological parent: If the DCF (Department of Children and Families) goal is for the reunification of the parent and child, the following risk factors apply based on the birth/biological parent. The Early Intervention program should work closely with both the birth and foster families of the infant or toddler, whenever possible. If there is no goal for reunification with the child’s birth/ biological parents, the risk factors are to be based on the primary caregivers.

NOTE #2 – Determination of risk factors under parent characteristics should be based on parent perception.

NOTE #3 – Maternal characteristics apply as risk factors to fathers if the father is the primary caregiver.

NOTE #4 – Written documentation of parent risk factors is kept in the Early Intervention record.

1. Maternal age of less than 17 years at child’s birth or there is a maternal history of 3 or more births before age 20.
2. Maternal education of 10 years or less. A mother meets this risk factor if she has completed 10 years or less of formal education at the time of the eligibility evaluation.
3. Parental chronic illness or disability affecting care-giving ability. This risk factor applies if a parent has a diagnosed chronic illness or a sensory, mental, or developmental disability that is likely to interfere with or adversely affect the infant or toddler’s development or have an impact on care-giving abilities. Examples of this risk factor may be affective disorders, schizophrenia, sensory limitations, including visual or hearing limitations, and cognitive limitations.
4. Parent lacking social supports. This risk factor applies if the parent is geographically or socially isolated and in need of emotional support and services.
5. Inadequate food, clothing, or shelter, including homelessness. This risk factor applies if the lack of food, clothing, or a stable housing arrangement causes life stress for the family.
6. Open or confirmed protective service investigation, including a child currently in foster care. *This risk factor applies if the family:*
 - has an open protective service file with the Department of Children and Families, or
 - is in the period of investigation for child abuse or neglect, or

