

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

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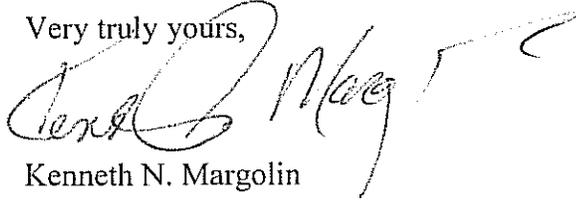
October 29, 2014

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

Dear Mr. Hansen:

The attached "Reservation of Rights" and Dover Amendment package, is part of and incorporated into, Criterion Child Development, Inc.'s site plan review submission to the CPDC.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kenneth N. Margolin", with a long horizontal flourish extending to the right.

Kenneth N. Margolin

KNM/JF

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

INDEX OF EXHIBITS

**Criterion Child Development, Inc./186 Summer Ave., Reading  
Reservation of Rights and Dover Amendment Materials to the  
Community Planning and Development Commission**

Exhibits

<u>No.</u>	<u>Description of Exhibit</u>
1	Reservation of Rights Letter with Attachment
2	Affidavit of Robert F. Littleton, Jr., Ed.D.
3	Criterion Child Enrichment, Inc. Articles of Organization, and Articles of Amendment (Name Change)
4	Brief Project Description by Marc A. Maxwell, AIA
5	"What is Early Intervention" – Description by the Commonwealth of Massachusetts
6	20 USC §§ 1431 – 1437 (portion of the Early Childhood Intervention section of the Federal Individuals with Disabilities Education Act)

# **EXHIBIT 1**

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October 6, 2014

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

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

**RESERVATION OF RIGHTS**

Dear Mr. Hansen:

I represent Criterion Child Enrichment, Inc. ("Criterion"), with regard to its plans to open an Early Childhood Intervention program at 186 Summer Avenue, in Reading. Criterion is also represented by Attorney John V. Fernandes. For the reasons set forth below, Criterion submits its Site Plan Review application, pursuant to §4.3.3 of the Reading Zoning Bylaw, under a reservation of rights. This reservation of rights will also apply to all communications with, or appearances before, the Town of Reading Community Planning and Development Commission (the "CPDC").

Criterion asserts that the CPDC has no authority to impose upon Criterion's planned Early Childhood Intervention program, a site plan review process. By submission of its Site Plan Review application, and communication with or appearance before the CPDC, Criterion does not waive its legal rights under the Dover Amendment, *MGL c. 40A, §3*, or any other applicable state or federal law.

While protecting its legal rights with this Reservation of Rights, Criterion wishes to work closely and cooperatively with all Town of Reading officials and boards, including the CPDC. Criterion has deservedly earned a reputation as a good neighbor in all the towns in which it serves children and families in need of its services. It is Criterion's hope that its planned construction and renovation, which will fit gracefully and respectfully on its lot and in the neighborhood, will be satisfactory to the CPDC. What Criterion wishes to avoid is the imposition upon it, of undue expense and delay not authorized by law.

October 6, 2014

Page 2 of 2

### Discussion

Criterion's planned Early Childhood Intervention program is protected by the Dover Amendment, *MGL c. 40A, §3* (a comprehensive discussion of the applicability of the Dover Amendment to Criterion's project is contained in the memorandum to Town Counsel, J. Raymond Miyares, dated 09/28/2014, a copy of which is attached as Exhibit "A", and incorporated into this Reservation of Rights).

The Town of Reading's Site Plan Review process requires the applicant to submit detailed plans and narratives, leading to a review and decision process far beyond the oversight that a municipality may impose on a Dover Amendment use such as Criterion's. Massachusetts courts have held for more than three decades that the Dover Amendment does not permit site plan review to be imposed upon a use protected by the statute.<sup>1</sup> While one federal court opined, in seeming contravention to Massachusetts appellate law, that site plan review was not always inapplicable to a Dover Amendment use, even that court acknowledged only a very limited process involving simple review of the elements contained at *MGL c. 40A, §3, ¶2*.<sup>2</sup>

### Conclusion

The CPDC lacks authority to impose upon Criterion, the site plan review process set forth in the Town of Reading Zoning Bylaw. Nevertheless, subject to this Reservation of Rights, Criterion looks forward to cooperating and working with the CPDC as Criterion's project moves forward.

Very truly yours,



Kenneth N. Margolin

KNM/JF

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

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<sup>1</sup> See, for example: *Teddy Bear Club, Inc. v. City of Newton*, WL 2212768 (Mass. Land Ct. 10/4/2004 : "It is also clear that zoning ordinances cannot impose site plan requirements on Dover Amendment uses...."; *Bay Farm Montessori Acd., Inc. v. Town of Duxbury*, 75 Mass.App.Ct. 1103 (2009), quoting *Bible Speaks v. Town of Lenox*, 8 Mass.App.Ct. 19, 31-32 (1979): "... there [was] nothing in the language of G.L. c. 40A, §3, which contemplates the requirement of site plans and informational statements as monitoring devices for educational uses ..."

<sup>2</sup> "... any application of the site plan review process to [Dover Amendment] uses may only be applied to the extent allowed under [the Dover Amendment], that is, to check for compliance with reasonable regulations pertaining to bulk and height of structures, yard size, lot area, setbacks, open space, parking, and building coverage requirements..." *South Middlesex Opportunity Council, Inc. v. Town of Framingham*, 2008 WL 4595369 (D.Mass. 9/30/2008).

Exhibit A

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

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August 6, 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:

I represent Criterion Child Enrichment, Inc. (Criterion) with regard to the property at 186 Summer Avenue, Reading, Massachusetts.<sup>1</sup> Criterion is a nonprofit, charitable organization, established for the purpose of providing human services to persons who have been subjected to circumstances which have adversely affected their ability to lead normal lives, including persons at risk for later-appearing functional deficits, and their families (a copy of the purposes section of Criterion's Articles of Organization, is attached to this memorandum and labeled "A").

It has come to Criterion's attention that some residents oppose Criterion's plans for an Early Childhood Intervention program on the property. Dr. Robert F. Littleton, Jr., Criterion's President, has asked me to prepare a memorandum for Reading Town Counsel, addressing Criterion's right to use its property for its Early Childhood Intervention program.

As is set forth below, Criterion's planned use is fully protected by the Massachusetts "Dover Amendment," *M.G.L. c. 40A, §3*. Further protection for Criterion's program is provided by the Americans with Disabilities Act, *42 U.S.C. §12101, et seq.*, and Section 504 of the Rehabilitation Act, *29 U.S.C. §794*.<sup>2</sup>

<sup>1</sup> Criterion is also represented by John V. Fernandes, Esq., of Milford. Attorney Fernandes has been handling various permitting issues, including the demolition permit.

<sup>2</sup> Criterion is confident that it will have no difficulty meeting all reasonable parking and dimensional requirements, that may be lawfully regulated under the Dover Amendment. In addition to 186 Summer Avenue, the contiguous, unbuildable lot known as 190 Summer Avenue, is included in Criterion's P & S. It is fundamental that "[A]djacent lots in common ownership will normally be treated as a single lot for zoning purposes ...." *Preston v. Bd. of Appeals of Hull*, 51 Mass. App. Ct. 236, 238 (2001) (citations omitted).

I. Current Status of the Property

Criterion has a signed Purchase and Sales Agreement with the current owner, for the property. The structures on the property are listed as historic structures, pursuant to §7.2.3 of the Town of Reading General Bylaw (the "Bylaw"). Criterion has applied for a demolition permit. A public hearing was held on July 29, 2014, and the six month demolition delay period pursuant to §7.2.6 of the Bylaw has begun. Criterion management will work with the Town to explore potential alternatives to complete demolition, as required by the Bylaw, and hopes to reach a mutually acceptable resolution in advance of expiration of the six month delay.

Once complete or partial demolition has occurred, Criterion will build a structure to house an Early Childhood Intervention program, that it will operate at 186 Summer Avenue (a copy of the program description portion of the "186 Summer Street Demolition Permit Supporting Documentation," submitted by Criterion as part of its Demolition Permit application, is attached to this memorandum and labeled "B").

II. Overview of Criterion's Early Childhood Intervention Program

Criterion's Early Childhood Intervention program is operated pursuant to Part C of IDEA, the federal Individuals with Disabilities Education Act, *20 U.S.C. §1432, et seq.*, and pursuant to *M.G.L. c. 111G, §1, et seq.*, and attendant regulations. The program will serve children between birth and three years of age, and their families, when the children have documented developmental delays or are at risk for developmental delay. The services provided are "for the purpose of minimizing the potential for developmental delay and for preventing the institutionalization of such children and shall be developmental services, including but not limited to speech, occupational and physical therapy, social work, psychological, educational, and nursing services." *M.G.L. c. 111G, §1.*

Early childhood intervention programs, such as Criterion's, are an integral part of the state and federally mandated special education system. Services to Criterion's children and families, will be provided pursuant to an Individualized Family Service Plan (IFSP), which is developed after careful "multidisciplinary assessment of the unique strengths and needs of the infant or toddler and the identification of services appropriate to meet such needs." *20 U.S.C. §1436.*

Not surprisingly, given the Early Childhood Intervention program's place as part of the special education system, the IFSP bears many similarities to the Individualized Education Program (IEP) required by *20 U.S.C. §1414* and *M.G.L. 71B, §3*, and includes, among other elements, "a statement of the measurable results or outcomes expected to be achieved for the infant or toddler and the family, including pre-literacy and language skills, as developmentally appropriate for the child, and the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the results or

outcomes is being made and whether modifications or revisions of the results or outcomes or services are necessary..." 20 U.S.C. §1436(d)(3). The program must incorporate "an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills..." 20 U.S.C. §1435(c)(2)(B).

Criterion will serve small groups of children at its 186 Summer Ave. program. Staff will also provide early childhood intervention services to children and their families, in their homes. Criterion, established in 1985, is one of the largest providers of child and family development services in the Commonwealth, serving over 5,000 families each year, with a staff of over 300 professionals at 12 locations throughout the state. Criterion has a deserved reputation for excellence. Criterion is also a good neighbor, and values cooperative relationships with municipal officials.

### III. The Application of the Dover Amendment to Criterion's Planned Use

The Dover Amendment, *M.G.L. c. 40A, §3*, allows programs by nonprofit educational corporations, that serve an educational purpose, to locate as of right in any zoning district, subject only to a specific list of reasonable dimensional and parking requirements.<sup>3</sup> The statute has a lengthy history of judicial interpretation. An overriding theme of the case law for decades, has been that the definition of "education" is expansive and not restricted to traditional schooling. The wide variety of uses deemed "educational" under the law have included, single-family group homes at which habilitation and daily living skills are taught (*Harbor Schools, Inc. v. Board of Appeals of Haverhill*, 5 Mass.App.Ct. 600 (1977); *Fitchburg Housing Authority v. Zoning Board of Appeals of Fitchburg*, 380 Mass. 869 (1980)); major universities, (*Trustees of Tufts College v. City of Medford*, 415 Mass. 753 (1993)); mental health corporation providing services for prevention and treatment of mental illness (*Gardner-Athol Area Mental Health Association, Inc. v. Zoning Board of Appeals of Gardner*), supra, a homeless shelter at which various life coping skills were taught to homeless families, *Brockton Coalition for the Homeless v. Tonis*, 2004 WL 810296 (Mass. Super., Hely, J.); and other programs providing services beyond traditional schooling.

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<sup>3</sup> An "educational corporation" is simply a nonprofit corporation whose operation of an educational program, as defined by the Dover Amendment, is within the authority granted by the corporation's bylaws. *Gardner-Athol Area Mental Health Ass'n, Inc. v. Zoning Bd. of Appeals of Gardner*, 401 Mass. 12, 16 (1987).

The oft-quoted definition of "education" in *Mount Hermon Boys' Sch. v. Gill*, 145 Mass. 139, 146 (1887), has been incorporated into Dover Amendment jurisprudence:

... Education is a broad and comprehensive term. It has been defined as 'the process of developing and training the powers and capabilities of human beings....' Education may be particularly directed to either the mental, moral, or physical powers and faculties, but in its broadest and best sense it relates to them all.

In many ways, Criterion's Early Childhood Intervention program is more traditionally educational than community residences in which the teaching of life skills, such as coping with significant learning and emotional difficulties, independent living, self-care, job seeking, budgeting, and making use of community resources, occur – all recognized as "educational purposes" protected by c. 40A, §3 (and its predecessor, c. 40A, §2). *Fitchburg Housing Authority v. Board of Zoning Appeals of Fitchburg*, supra.<sup>4</sup>

#### IV. Threatened Bylaw Amendment

Some opponents of Criterion's program, have stated publicly that they will try to persuade Reading elected officials to push through a historic commission or historic district-related Bylaw amendment, aimed at derailing Criterion's plans. Such a provision, however worded, would blatantly target Criterion and the children and families it plans to serve, and would violate the Americans with Disabilities Act, as well as the Dover Amendment.

There is no doubt that Criterion will serve children who have "disabilities" as defined in the Americans with Disabilities Act (the "ADA"), 42 U.S.C. §12101, et seq.; 42 U.S.C. §12102. The ADA was enacted to prevent discrimination against individuals on the basis of handicap, and to aid their integration into all public activities. 42 U.S.C. §12101; Executive Order 13217, June 18, 2001, 66 F.R. 33155.<sup>5</sup> The activities of the Historical Commission, any Historic District Commission, and the Reading Board of Selectmen, are

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<sup>4</sup> Criterion's program, existing as it does as part of the federal and state special education spectrum of services, is in no way similar to those programs in which the educational component was secondary, an after-thought. (See, for example, *Whitinsville Retirement Society, Inc. v. Town of Northbridge*, 394 Mass. 757 (1985); *Regis College v. Town of Weston*, 462 Mass. 280 (2012)).

<sup>5</sup> As a result of federal funding to the Town of Reading, Section 504 of the Rehabilitation Act, 29 U.S.C. §794, would likely also apply. Courts have interpreted the ADA and the Rehabilitation Act, essentially the same. (see, for example, *South Middlesex Opportunity Council, Inc.*, 752 F.Supp.2d 85, 114 (D.Mass. 2010), citing, *Tsombanidis v. West Haven Fire Dep't*, 352 F.3d 565, 573-74 (2d Cir. 2003); *Sharpsvisions, Inc. v. Borough of Plum* 475 F.Supp.2d 514, 521 (W.D. Pa 2007)).

"services, programs or activities" as set forth in the ADA, 42 U.S.C. §12132. See, *Culvahouse v. City of LaPorte*, 679 F. Supp. 2d 931, 946 (N.D. Ind. 2009), for a discussion of the comprehensive scope of "services, programs or activities" covered by the law.

Any discriminatory intent aimed at Criterion because of the disabilities of the clients it serves, would obviously violate the ADA. Even absent discriminatory intent, however, a bylaw designed to thwart Criterion by forcing it to leave in place historic elements to its property that would render it unfit for its clients with disabilities, would have a disparate impact on Criterion. Under a disparate impact theory, there need be no evidence of discriminatory intent – only of negative impact, on the basis of handicap, by a facially neutral act or policy. *Gamble v. City of Escondido*, 104 F.3d 300, 306 (9th Cir. 1997). The services that Criterion will provide to infants and young children with disabilities, and their families, are desperately needed in Reading and surrounding areas. Criterion's choice of properties was made after an extensive search. The Bylaw amendment that some Reading residents hope will be enacted, would have a far larger negative impact on Criterion clients – because of their disabilities – than it would on non-handicapped individuals, and would thus violate the federal civil rights legislation, the ADA.

Despite the fact that that the threatened Bylaw amendment might not be part of the Town of Reading Zoning Bylaw, it would nevertheless violate Criterion's rights under the Dover Amendment. While programs protected by the Dover Amendment are not exempt from all land use requirements (see, for example, *Southern New England Conference of Seventh-Day Adventists v. Town of Burlington*, 21 Mass.App.Ct. 701 (1986)), courts have invalidated attempts to use criteria outside of the Dover Amendment to restrain the use of properties protected by the law. For example, the Land Court has recognized the inappropriateness of using traffic concerns to block a Dover Amendment project, holding that "... discretion to overturn a child care facility use based on general traffic safety issues would certainly violate the Dover Amendment ...." *Teddy Bear Club, Inc. v. City of Newton*, 2004 WL 2212768 (Mass.Land Ct., Sands, III, J.) at 5.

In a leading Dover Amendment case, the Appeals Court held that municipal decisions made under non-zoning powers, can still violate the Dover Amendment. In overturning the Town of Brookline's denial of a lodging house license, the Appeals Court acknowledged that while Brookline's licensing scheme was not part of the zoning bylaw, that:

... a municipality may not, through the exercise of its power under G.L. c. 140, §23, *undo the Dover Amendment* by forbidding the use of land for educational purposes on general grounds of adverse impact on the neighborhood or similar land use considerations.

*Newbury Junior College v. Town of Brookline*, 19 Mass.App.Ct. 197, 206-207 (1985) (emphasis supplied).

The Court noted further that "[A] municipality cannot achieve indirectly that which it is forbidden to achieve directly." *Id.* at 206, quoting *Rogers v. Provincetown*, 384 Mass. 179, 182 (1981), and endorsed the trial judge's ruling that "[T]he courts have repeatedly said that educational use cannot be prohibited by zoning. To allow such use to be prohibited by any backdoor method ... is ... wrong." *Id.* at 207.

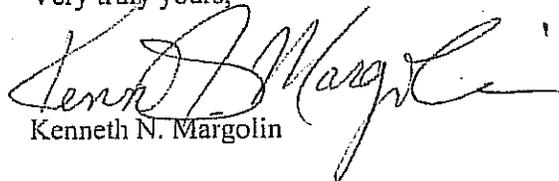
V. Conclusion

Criterion's Early Childhood Intervention program, planned for 186 Summer Avenue, Reading, falls well within the scope of "educational purpose" under *c. 40A, §3*. Given Criterion's undeniable status as an "educational corporation" as defined by the Supreme Judicial Court in *GAAMHA v. Zoning Board of Appeals of Gardner*, *supra*, Criterion's program will have absolute use protection under the Dover Amendment. When the time comes for Criterion's application for a Building Permit, Criterion management is confident that it will meet all lawful and reasonable dimensional and parking regulations. They look forward to working with Town of Reading officials toward a smooth and timely opening of the program.

Threatened efforts to stop Criterion from serving children with disabilities and their families, by way of a historic commission or historic district bylaw, would run afoul of the Americans with Disabilities Act and the Dover Amendment, and would be unlawful, as well as unjust.

Please do not hesitate to call if you have any questions about this memorandum or Criterion's planned Early Childhood Intervention program.

Very truly yours,

  
Kenneth N. Margolin

KNM/JF

Cc: John V. Fernandes, Esq.

"A"

The Commonwealth of Massachusetts

MICHAEL JOSEPH CONNOLLY

Secretary of State

ONE ASHBURTON PLACE, BOSTON, MASS. 02108

ARTICLES OF ORGANIZATION

(Under G.L. Ch. 180)

Incorporators

NAME

RESIDENCE

Include given name in full in case of natural persons; in case of a corporation, give state of incorporation.

Robert F. Littleton, Jr.

9 Walnut St., Milford, MA 01757

112108

The above-named incorporator(s) do hereby associate (themselves) with the intention of forming a corporation under the provisions of General Laws, Chapter 180 and hereby state(s):

- 1. The name by which the corporation shall be known is:

Center for the Development of Human Services, Inc.

- 2. The purposes for which the corporation is formed is as follows:

The Center for the Development of Human Services, Inc. is a charitable corporation organized to provide human services for persons who have been subjected to physical, environmental or social circumstances which have adversely affected their ability to lead normal lives. Those receiving services shall include persons for whom symptoms have not yet appeared but who have experienced circumstances that research has shown places them "at-risk" for functional defects which may appear at a later date. The Corporation shall also educate such persons and their families to deal with the problems associated with such circumstances and engage in any other activities necessary for the effective implementation of the above-listed objectives. This may include the provision of administrative and/or managerial services for other corporations or persons committed to similar human service objectives. Such objectives will be carried out without regard to the race, religion, color, sex, national and/or ethnic origin of any student, employee, contractor or vendor with whom the organization has any dealings; and to engage exclusively as an organization to advance such purposes within the meaning of and in compliance with Section 501(c) (3) of the Internal Revenue Code of 1954 or similar section as amended.

- C 
P 
M 
R.A.

84 338036

Note: If the space provided under any article or item on this form is insufficient, additions shall be set forth on separate 1/2 x 11 sheets of paper leaving a left hand margin of at least 1 inch for binding. Additions to more than one article may be continued on a single sheet so long as each article requiring each such addition is clearly indicated.

FEDERAL IDENTIFICATION  
NO. 22-2592997  
Fee: \$15.00

The Commonwealth of Massachusetts

William Francis Galvin  
Secretary of the Commonwealth  
One Ashburton Place, Boston, Massachusetts 02108-1512

C-47

ARTICLES OF AMENDMENT  
(General Laws, Chapter 180, Section 7)

Examiner

  
Name  
Approved

We, Robert F. Littleton, Jr. \*President / \*Acting President

and Melvin Thompson \*Clerk / \*Assistant Clerk

of Center for the Development of Human Services, Inc.  
(Exact name of corporation)

located at 345 Fortune Boulevard, Milford, Massachusetts  
(Address of corporation in Massachusetts)

do hereby certify that these Articles of Amendment affecting articles numbered:

1. Name Change only  
(Number these articles 1, 2, 3, and/or 4 being amended)

of the Articles of Organization were duly adopted at a meeting held on Sept. 22, 2003, by vote of:

four (4) members, or four (4) directors, or four (4) members

being at least two-thirds of its members/directors legally qualified to vote in meetings of the corporation (or, in the case of a corporation having capital stock, by the holders of at least two thirds of the capital stock having the right to vote therein):

To change the name of the corporation from:  
Center for the Development of Human Services, Inc.  
to: Criterion Child Enrichment, Inc.

- C
- P
- M
- R.A.

37

\*Delete the inapplicable words.  
Note: If the space provided under any article or item on this form is insufficient, additions shall be set forth on one side only of separate 8 1/2 x 11 sheets of paper with a left margin of at least 1 inch. Additions to more than one article may be made on a single sheet so long as each article requiring each addition is clearly indicated.

P.C.

12/3/84

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The windows are deteriorated with wood rot and damaged components. The entry door and ramp need repair. The basement is not properly vented. The floor boards, joists, sills and beams show sign of wood rot, settlement and structural movement. There are insufficient columns and foundations under those that are existing. There is evidence of rodents. There is no insulation in the walls and ceilings. The basement dirt floor is deteriorated and settled. The basement structural beams are cracked, split and settled. There appears to be a slant in areas of the walls and structure from age, settlement and structural movement. Portion of the framing appear unsafe. There is evidence of water infiltration. There appears to be no lighting in the barn. There is no insulation in the barn.

#### DEMOLITION SUPPORTING DATA

Attached is the Home Inspection report prepared by Imperial Inspection Services, Inc. Of Braintree, MA on March 1, 2014.

#### DESCRIPTION OF THE PROPOSED REUSE OF THE PROPERTY

Criterion Child Enrichment is specifically purchasing this site to create a Criterion Early Intervention Program Site for the Reading community and the surrounding towns and neighborhoods.

Criterion Child Enrichment specializes in developmentally appropriate programs and services for young children and their families. Our mission seeks to support the early development and education of young children and their families. We believe in the strength of the family and its capacity to promote the health and development of children.

We offer community-based developmental enrichment groups, child care, early intervention and newborn home visiting programs.

We emphasize the professional development of staff and other community early childhood providers. Each year, our agency sponsors the Great Beginnings Conference for advanced early childhood professionals.

Founded in 1985, we have grown to be one of the largest providers of child and family development services in the Commonwealth of Massachusetts. Criterion Child Enrichment is a private non-profit corporation. We serve over 5000 families each year with a staff of over 300 professionals at 12 locations throughout Massachusetts.

Site specifically, the Criterion Early Intervention Program facility must be handicap accessible to all users and staff, as well as free from hazardous materials including asbestos and lead paints, commonly found in structures of the age and construction of the existing buildings on this property. The building must be fire protected. Criterion is quite excited about the geographic location of this site, centered nicely in their catchment and market area. The completed facility must meet current Federal, State and Local code requirements for Educational Structures. Ideally, the completed facility will comprise one level, accessible from grade and parking without the use of lifts or elevators. The present two building arrangement, with multiple floors and misaligned floor plates from the house to the barn, do not practically reconfigure into the required spaces and floor areas. A Preliminary Facility Program is attached to describe the desired spaces and sizes of rooms contemplated for a new structure on this site. The significantly compromised foundations and structural frames of the existing house and barn, as well as the antiquated electrical, mechanical, insulation and roofing systems, and the existing configuration of small residential spaces spread over three floors, do not lend themselves to conversion to support the approximately 10,000 SF of usable space required for the Criterion Program.

For these reasons we request permission to demolish the existing structures and once granted, we will prepare Conceptual Plans for the Criterion Early Intervention Program facility we intend to construct on the property.

Respectfully submitted,

Marc A. Maxwell, AIA  
Maxwell Architects, LLC  
Architect for Criterion Child Enrichment

## **EXHIBIT 2**

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.....

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 Development, 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 along with Criterion's Reservation of Rights letter and Dover Amendment materials to the Town's Community Planning and Development Commission, prepared by our attorney, Kenneth N. Margolin. The purpose of the Dover Amendment materials is to establish that Criterion's planned Early Childhood Intervention program is an educational use covered by the zoning protections of the Dover Amendment, *MGL c. 40A, §3*.
3. The Affidavit explains the primary educational purpose of Criterion's planned Early Childhood Intervention program.
4. I have been involved in the field of early childhood education for forty years. A summary of my educational background and relevant professional experience, is attached to this Affidavit as Exhibit A.
5. Education can be defined as the act or process of imparting or acquiring particular skills. The Massachusetts Early Intervention system is comprised of community-based programs, which provide comprehensive, integrated services to facilitate the developmental progress and skill development of eligible children between the ages of birth to three years old. Eligible children are those whose developmental pattern are

atypical, or are at serious risk to become atypical through the influence of certain biological and/or environmental factors.

6. Early intervention services are designed to meet the developmental needs of each child and the needs of the family related to enhancing the child's cognitive, physical and social development. Services are selected in collaboration with families, using an Individualized Family Service Plan. Early Intervention educators, including physical, speech and occupational therapists, and developmental specialists, work with children and their families in home, center and community-based settings.

7. Educational services are provided for academic, recreational and behavioral education needs that may include home visits, parent groups, individual therapies and center-based toddler groups. Services include screening, assessment and individual and small group training.

8. In addition to direct services provided to children, Early Intervention is a training, education and support program for parents and caregivers of eligible children. Within this training, parents and caregivers are taught how to incorporate intervention strategies into their child's daily routines to ensure achievement of developmental outcomes identified in the Individualized Family Service Plan (IFSP).

9. Parent education groups are designed to provide the Early Intervention program an opportunity to inform parents and other interested caregivers about specific topics related to child development such as; early language development, behavior management, feeding issues or sleep problems.

10. Each child eligible for services has received a thorough developmental evaluation to determine their areas of needs. From this evaluation, an Individualized Family Service

Plan (IFSP) is developed outlining the services to work on specific educational and developmental outcomes for each child. Parents are partners in the identification of these outcomes and are provided with support and training to engage their child in routine based activities each day. These activities are specifically designed to provide additional and repetitive educational opportunities to enhance their child's development. As children gain skills through services provided at their home and at the center, new outcomes are developed to continuously promote developmental advancement and mastery of skills that provide the expected independence typical for their age.

11. Children receiving early intervention services are formally transitioned to public schools at least within 90 days of their third birthday. Optimally, children are referred at 2 ½ years of age and information is shared with the public schools about the child's developmental and educational status, outlining the child's strengths and needs and ways that the child learns best. This transition is key to assisting special education preschool classrooms to develop educational programming for the child consistent with the early intervention experiences and developmental and educational services embedded in the individualized plan while at the early intervention program.

12. The Individuals with Disabilities Education Act (IDEA), originally known as the Education of All Handicapped Children Act, was enacted by Congress in 1975 to ensure that children with disabilities have the opportunity to receive a free appropriate public education, just as typically developing children do. In the 1986 reauthorization of this

law, Congress established Part C of IDEA, the program of early intervention for infants and toddlers with disabilities in recognition of “an urgent and substantial need” to:

enhance the development of infants and toddlers with disabilities to minimize their potential for developmental delay;

minimize the need for special education and related services after infants and toddlers with disabilities reach school age;

minimize the likelihood of institutionalization of individuals with disabilities and maximize the potential for their independent living in society; and

enhance the capacity of families to meet the special needs of their infants and toddlers with disabilities.

13. When the final regulations to Part C of IDEA were published in September 2011, U.S. Secretary of Education, Arne Duncan, highlighted the educational purpose of early childhood intervention, stating:

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 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. Department of Education, Office of Special Education Programs’ (OSEP’s) Part C of the IDEA website: <http://idca.ed.gov/part-c/search/new>).

14. Every child receiving early intervention services has an Individualized Family Service Plan outlining outcomes and services to address to meet those outcomes. For example, a high percentage of children receiving early intervention services have speech and language delays. These children will receive services at the home or center by a Developmental Specialist trained in early childhood development and education. A

program with specific strategies and activities will be used to engage the child in language acquisition and promote opportunities to communicate. Achieving their developmental and educational goals prepares each child for their transition to public schools at age three years old, if needed.

15. Parents are encouraged to be active participants in the home visit. The Early Intervention Educator describes the objectives of the visit and the strategies to be used. There is discussion about why a particular strategy has been selected and how the child is responding to that approach. The Early Intervention Educator models desired interactions or skills for the parent, gives the parent an opportunity to practice and then discuss the manner in which they can be incorporated into daily routines.

16. Training on strategies and techniques also occurs through parent-child groups at the center where they are engaged with their child amongst other children whose parents attend these developmentally appropriate groups. Other educators that support the services provided to the child with the parent present are Speech and Language Pathologists, Physical Therapists and Occupational Therapists. Their roles are to provide ongoing assessment of each child's developmental progress in the communication, gross and fine motor areas. Their support to service providers and parents helps to provide the best comprehensive approaches to assist children to obtain their greatest potential in all facets of their educational development.

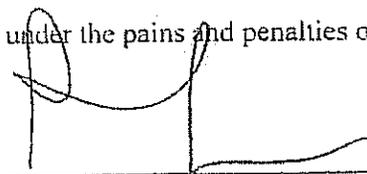
17. Children may also receive individual center visits provided by the specialists outlined above when there is a need for specialized equipment, materials or space that will best promote acquisition of developmental and educational goals. Parents may also

attend a parent support or education group that has a specific curriculum which teaches methods and strategies to promote children's developmental and educational outcomes.

18. All Early Intervention personnel providing early intervention services are certified by the Department of Public Health as the lead agency for administering Part C of the Individual with Disabilities Education Act (IDEA). Certified Early Intervention Specialists comprised of various developmental, educational and allied health personnel collaboratively work as a team to address the outcomes of each child in partnership with his or her family. All personnel are highly qualified with specifically required educational backgrounds and credentials which directly ensures that the agency's mission of education and support to young children and their families is realized.

19. As I hope the reader can see from the description of the Early Childhood Intervention services that will be provided by Criterion in its planned Reading program, education is at the heart and soul of the purpose of Early Childhood Intervention, both the life skills education that has always been considered education under the Dover Amendment, and education of the most traditional sort. The Early Childhood Intervention services that Criterion will provide through its Reading program will help children with disabilities benefit from their education throughout their school years, and better their opportunities to live more productive, independent and fulfilling lives.

Signed this 7<sup>th</sup> day of October, 2014, under the pains and penalties of perjury.



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

**Exhibit A**

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 Development, 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. I 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 3**

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"A"

Examiner

# The Commonwealth of Massachusetts

MICHAEL JOSEPH CONNOLLY

Secretary of State

ONE ASHBURTON PLACE, BOSTON, MASS. 02108

## ARTICLES OF ORGANIZATION (Under G.L. Ch. 180)

Incorporators

NAME

RESIDENCE

Include given name in full in case of natural persons; in case of a corporation, give state of incorporation.

Robert F. Littleton, Jr. 9 Walnut St., Milford, MA 01757

112108

The above-named incorporator(s) do hereby associate (themselves) with the intention of forming a corporation under the provisions of General Laws, Chapter 180 and hereby state(s):

1. The name by which the corporation shall be known is:

Center for the Development of Human Services, Inc.

2. The purposes for which the corporation is formed is as follows:

The Center for the Development of Human Services, Inc. is a charitable corporation organized to provide human services for persons who have been subjected to physical, environmental or social circumstances which have adversely affected their ability to lead normal lives. Those receiving services shall include persons for whom symptoms have not yet appeared but who have experienced circumstances that research has shown places them "at-risk" for functional defects which may appear at a later date. The Corporation shall also educate such persons and their families to deal with the problems associated with such circumstances and engage in any other activities necessary for the effective implementation of the above-listed objectives. This may include the provision of administrative and/or managerial services for other corporations or persons committed to similar human service objectives. Such objectives will be carried out without regard to the race, religion, color, sex, national and/or ethnic origin of any student, employee, contractor or vendor with whom the organization has any dealings; and to engage exclusively as an organization to advance such purposes within the meaning of and in compliance with Section 501(c) (3) of the Internal Revenue Code of 1954 or similar section as amended.

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- M
- R.A.

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Note: If the space provided under any article or item on this form is insufficient, additions shall be set forth on separate 8 1/2 x 11 sheets of paper leaving a left hand margin of at least 1 inch for binding. Additions to more than one article may be continued on a single sheet so long as each article requiring each such addition is clearly indicated.

P.C.

FEDERAL IDENTIFICATION  
NO. 22-2592997  
Fee: \$15.00

# The Commonwealth of Massachusetts

William Francis Galvin  
Secretary of the Commonwealth  
One Ashburton Place, Boston, Massachusetts 02108-1512

C-47

Examiner

*[Signature]*  
Name  
Approved

## ARTICLES OF AMENDMENT (General Laws, Chapter 180, Section 7)

We, Robert F. Littleton, Jr., \*President / \*Vice President

and Malvin Thompson, \*Clerk / \*Assistant Clerk

of Center for the Development of Human Services, Inc.  
(Exact name of corporation)

located at 345 Fortune Boulevard, Milford, Massachusetts  
(Address of corporation in Massachusetts)

do hereby certify that these Articles of Amendment affecting articles numbered:

1. Name Change only  
(Number these articles 1, 2, 3, and/or 4 being amended)

of the Articles of Organization were duly adopted at a meeting held on Sept. 22, 2003, by vote of:

four (4) directors, or four (4)

being at least two-thirds of its members/directors legally qualified to vote in meetings of the corporation (or, in the case of a corporation having capital stock, by the holders of at least two thirds of the capital stock having the right to vote therein):

To change the name of the corporation from:  
Center for the Development of Human Services, Inc.  
to: Criterion Child Enrichment, Inc.

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- R.A.

3

\*Delete the inapplicable words.  
Note: If the space provided under any article or item on this form is insufficient, additions shall be set forth on one side only of separate 8 1/2 x 11 sheets of paper with a left margin of at least 1 inch. Additions to more than one article may be made on a single sheet so long as each article requiring each addition is clearly indicated.

P.C.

12/3/84

# **EXHIBIT 4**

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The windows are deteriorated with wood rot and damaged components. The entry door and ramp need repair. The basement is not properly vented. The floor boards, joists, sills and beams show sign of wood rot, settlement and structural movement. There are insufficient columns and foundations under those that are existing. There is evidence of rodents. There is no insulation in the walls and ceilings. The basement dirt floor is deteriorated and settled. The basement structural beams are cracked, split and settled. There appears to be a slant in areas of the walls and structure from age, settlement and structural movement. Portion of the framing appear unsafe. There is evidence of water infiltration. There appears to be no lighting in the barn. There is no insulation in the barn.

#### DEMOLITION SUPPORTING DATA

Attached is the Home Inspection report prepared by Imperial Inspection Services, Inc. Of Braintree, MA on March 1, 2014.

#### DESCRIPTION OF THE PROPOSED REUSE OF THE PROPERTY

Criterion Child Enrichment is specifically purchasing this site to create a Criterion Early Intervention Program Site for the Reading community and the surrounding towns and neighborhoods.

Criterion Child Enrichment specializes in developmentally appropriate programs and services for young children and their families. Our mission seeks to support the early development and education of young children and their families. We believe in the strength of the family and its capacity to promote the health and development of children.

We offer community-based developmental enrichment groups, child care, early intervention and newborn home visiting programs.

We emphasize the professional development of staff and other community early childhood providers. Each year, our agency sponsors the Great Beginnings Conference for advanced early childhood professionals.

Founded in 1985, we have grown to be one of the largest providers of child and family development services in the Commonwealth of Massachusetts. Criterion Child Enrichment is a private non-profit corporation. We serve over 5000 families each year with a staff of over 300 professionals at 12 locations throughout Massachusetts.

Site specifically, the Criterion Early Intervention Program facility must be handicap accessible to all users and staff, as well as free from hazardous materials including asbestos and lead paints, commonly found in structures of the age and construction of the existing buildings on this property. The building must be fire protected. Criterion is quite excited about the geographic location of this site, centered nicely in their catchment and market area. The completed facility must meet current Federal, State and Local code requirements for Educational Structures. Ideally, the completed facility will comprise one level, accessible from grade and parking without the use of lifts or elevators. The present two building arrangement, with multiple floors and misaligned floor plates from the house to the barn, do not practically reconfigure into the required spaces and floor areas. A Preliminary Facility Program is attached to describe the desired spaces and sizes of rooms contemplated for a new structure on this site. The significantly compromised foundations and structural frames of the existing house and barn, as well as the antiquated electrical, mechanical, insulation and roofing systems, and the existing configuration of small residential spaces spread over three floors, do not lend themselves to conversion to support the approximately 10,000 SF of usable space required for the Criterion Program.

For these reasons we request permission to demolish the existing structures and once granted, we will prepare Conceptual Plans for the Criterion Early Intervention Program facility we intend to construct on the property.

Respectfully submitted,

Marc A. Maxwell, AIA  
Maxwell Architects, LLC  
Architect for Criterion Child Enrichment

**EXHIBIT 5**

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WHAT IS

## Early Intervention?

Early Intervention (EI) in Massachusetts is a statewide, integrated, developmental service available to families of children between birth and three years of age. Children may be eligible for EI if they have developmental difficulties due to identified disabilities, or if development is at risk due to certain birth or environmental circumstances.

EI provides family-centered services that facilitate the developmental progress of eligible children. EI helps children acquire the skills they will need to continue to grow into happy and healthy members of the community.

### What should I do next?

- Call the Central Directory for Early Intervention at 1-800-905-8437, or visit [www.massfamilies.org](http://www.massfamilies.org) for a listing of certified Early Intervention programs serving your city or town.
- Call and speak with a local EI program to make a referral.



Massachusetts Department of Public Health  
Early Intervention Services

250 Washington Street  
Boston, MA 02108

[www.mass.gov/dph/earlyintervention](http://www.mass.gov/dph/earlyintervention)

Call: (617) 624-5060  
Toll: (617) 624-5992



Massachusetts Department of Public Health  
Early Intervention Services  
[www.mass.gov/dph/earlyintervention](http://www.mass.gov/dph/earlyintervention)

## Who is eligible for EI?

Any Massachusetts child up to three years of age and his/her family may be eligible for EI services if the child:

- Is not reaching age-appropriate milestones in one or more areas of development.
- Is diagnosed with a physical, emotional or cognitive condition that may result in a developmental delay.
- Is at risk for developmental delay due to various biological and/or environmental factors.

## How can a child and family become involved with EI?

The process is simple. Anyone (a parent, doctor, care giver, teacher or friend) can call 1-800-905-8437 and ask for a listing of certified Early Intervention programs serving a particular city or town. Early Intervention services do not require a prescription. Referrals are made directly to a certified program.

## What happens after a referral?

With parental consent, an EI team will conduct an evaluation with the child and family to determine eligibility. This evaluation will focus on specific areas of child development, including areas related to cognitive, language, motor, social, emotional, behavioral and self-help skills.

If the child is eligible, an Individualized Family Service Plan (IFSP) is written based on the individual needs of the child and family. The IFSP meeting occurs within 45 days of referral.

## Who provides EI services?

Services are provided by a professional and dedicated EI team, which includes the child's family. Depending on the child's needs, an EI team may also include a developmental specialist, physical therapist, speech-language pathologist, psychologist, occupational therapist, social worker, nurse and other specialty service providers.



## Where and how are services provided?

An EI team serves the child and family in what are called "natural settings" – for example, at home, childcare centers, community play groups or libraries. Providing services in natural settings supports children in their everyday activities with family and friends.

## Who pays for EI?

- Most health insurances pay for some or all of the cost of services if you give consent to have your insurance billed.
- The Massachusetts Department of Public Health pays for any costs not covered by insurance, including co-payments and deductibles.



**EXHIBIT 6**

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United States Code Annotated  
Title 20. Education  
Chapter 33. Education of Individuals with Disabilities (Refs & Annos)  
Subchapter III. Infants and Toddlers with Disabilities

20 U.S.C.A. § 1431

§ 1431. Findings and policy

Effective: July 1, 2005

Currentness

(a) Findings

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.

(b) Policy

It is the policy of the United States to provide financial assistance to States--

- (1) to develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system that provides early intervention services for infants and toddlers with disabilities and their families;
- (2) to facilitate the coordination of payment for early intervention services from Federal, State, local, and private sources (including public and private insurance coverage);
- (3) to enhance State capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with disabilities and their families; and

§ 1431. Findings and policy, 20 USCA § 1431

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(4) to encourage States to expand opportunities for children under 3 years of age who would be at risk of having substantial developmental delay if they did not receive early intervention services.

**CREDIT(S)**

(Pub.L. 91-230, Title VI, § 631, as added Pub.L. 108-446, Title 1, § 101, Dec. 3, 2004, 118 Stat. 2744.)

Notes of Decisions (4)

20 U.S.C.A. § 1431, 20 USCA § 1431

Current through P.L. 113-163 (excluding P.L. 113-128) approved 8-8-14

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End of Document

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United States Code Annotated  
Title 20. Education  
Chapter 33. Education of Individuals with Disabilities (Refs & Annos)  
Subchapter III. Infants and Toddlers with Disabilities

20 U.S.C.A. § 1432

§ 1432. Definitions

Effective: July 1, 2005

Currentness

In this subchapter:

(1) At-risk infant or toddler

The 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.

(2) Council

The term "council" means a State interagency coordinating council established under section 1441 of this title.

(3) Developmental delay

The term "developmental delay", when used with respect to an individual residing in a State, has the meaning given such term by the State under section 1435(a)(1) of this title.

(4) Early intervention services

The term "early intervention services" means developmental services that--

(A) are provided under public supervision;

(B) are provided at no cost except where Federal or State law provides for a system of payments by families, including a schedule of sliding fees;

(C) are designed to meet the developmental needs of an infant or toddler with a disability, as identified by the individualized family service plan team, in any 1 or more of the following areas:

(i) physical development;

(ii) cognitive development;

(iii) communication development;

(iv) social or emotional development; or

(v) adaptive development;

(D) meet the standards of the State in which the services are provided, including the requirements of this subchapter;

(E) include--

(i) family training, counseling, and home visits;

(ii) special instruction;

(iii) speech-language pathology and audiology services, and sign language and cued language services;

(iv) occupational therapy;

(v) physical therapy;

(vi) psychological services;

(vii) service coordination 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) social work services;

(xii) vision services;

(xiii) assistive technology devices and assistive technology services; and

(xiv) transportation and related costs that are necessary to enable an infant or toddler and the infant's or toddler's family to receive another service described in this paragraph;

(F) are provided by qualified personnel, including--

(i) special educators;

(ii) speech-language pathologists and audiologists;

(iii) occupational therapists;

(iv) physical therapists;

(v) psychologists;

(vi) social workers;

(vii) nurses;

(viii) registered dietitians;

(ix) family therapists;

(x) vision specialists, including ophthalmologists and optometrists;

(xi) orientation and mobility specialists; and

(xii) pediatricians and other physicians;

(G) to the maximum extent appropriate, are provided in natural environments, including the home, and community settings in which children without disabilities participate; and

(H) are provided in conformity with an individualized family service plan adopted in accordance with section 1436 of this title.

(5) Infant or toddler with a disability

The term “infant or toddler with a disability”--

(A) means an individual under 3 years of age who needs early intervention services because the individual--

(i) is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in 1 or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or

(ii) has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay; and

(B) may also include, at a State's discretion--

(i) at-risk infants and toddlers; and

(ii) children with disabilities who are eligible for services under section 1419 of this title and who previously received services under this subchapter until such children enter, or are eligible under State law to enter, kindergarten or elementary school, as appropriate, provided that any programs under this subchapter serving such children shall include--

(I) an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills; and

(II) a written notification to parents of their rights and responsibilities in determining whether their child will continue to receive services under this subchapter or participate in preschool programs under section 1419 of this title.

**CREDIT(S)**

(Pub.L. 91-230, Title VI, § 632, as added Pub.L. 108-446, Title I, § 101, Dec. 3, 2004, 118 Stat. 2744.)

Notes of Decisions (3)

20 U.S.C.A. § 1432, 20 USCA § 1432

Current through P.L. 113-163 (excluding P.L. 113-128) approved 8-8-14

United States Code Annotated Title 20. Education Chapter 33. Education of Individuals with Disabilities (Refs & Annos) Subchapter III. Infants and Toddlers with Disabilities
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20 U.S.C.A. § 1433

§ 1433. General authority

Effective: July 1, 2005

Currentness

The Secretary shall, in accordance with this subchapter, make grants to States (from their allotments under section 1443 of this title) to assist each State to maintain and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services for infants and toddlers with disabilities and their families.

**CREDIT(S)**

(Pub.L. 91-230, Title VI, § 633, as added Pub.L. 108-446, Title I, § 101, Dec. 3, 2004, 118 Stat. 2746.)

20 U.S.C.A. § 1433, 20 USCA § 1433

Current through P.L. 113-163 (excluding P.L. 113-128) approved 8-8-14

United States Code Annotated Title 20. Education Chapter 33. Education of Individuals with Disabilities (Refs & Annos) Subchapter III. Infants and Toddlers with Disabilities
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20 U.S.C.A. § 1434

§ 1434. Eligibility

Effective: July 1, 2005  
Currentness

In order to be eligible for a grant under section 1433 of this title, a State shall provide assurances to the Secretary that the State--

---

(1) has adopted a policy that appropriate early intervention services are available to all infants and toddlers with disabilities in the State and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State, infants and toddlers with disabilities who are homeless children and their families, and infants and toddlers with disabilities who are wards of the State; and

(2) has in effect a statewide system that meets the requirements of section 1435 of this title.

**CREDIT(S)**

(Pub.L. 91-230, Title VI, § 634, as added Pub.L. 108-446, Title I, § 101, Dec. 3, 2004, 118 Stat. 2746.)

20 U.S.C.A. § 1434, 20 USCA § 1434

Current through P.L. 113-163 (excluding P.L. 113-128) approved 8-8-14

United States Code Annotated  
Title 20. Education  
Chapter 33. Education of Individuals with Disabilities (Refs & Annos)  
Subchapter III. Infants and Toddlers with Disabilities

20 U.S.C.A. § 1435

§ 1435. Requirements for statewide system

Effective: December 20, 2010  
Currentness

(a) In general

A statewide system described in section 1433 of this title shall include, at a minimum, the following components:

- (1) A rigorous definition of the term "developmental delay" that will be used by the State in carrying out programs under this subchapter in order to appropriately identify infants and toddlers with disabilities that are in need of services under this subchapter.
- (2) A State policy that is in effect and that ensures that appropriate early intervention services based on scientifically based research, to the extent practicable, are available to all infants and toddlers with disabilities and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State and infants and toddlers with disabilities who are homeless children and their families.
- (3) A timely, comprehensive, multidisciplinary evaluation of the functioning of each infant or toddler with a disability in the State, and a family-directed identification of the needs of each family of such an infant or toddler, to assist appropriately in the development of the infant or toddler.
- (4) For each infant or toddler with a disability in the State, an individualized family service plan in accordance with section 1436 of this title, including service coordination services in accordance with such service plan.
- (5) A comprehensive child find system, consistent with subchapter II, including a system for making referrals to service providers that includes timelines and provides for participation by primary referral sources and that ensures rigorous standards for appropriately identifying infants and toddlers with disabilities for services under this subchapter that will reduce the need for future services.
- (6) A public awareness program focusing on early identification of infants and toddlers with disabilities, including the preparation and dissemination by the lead agency designated or established under paragraph (10) to all primary referral sources, especially hospitals and physicians, of information to be given to parents, especially to inform parents with premature infants, or infants with other physical risk factors associated with learning or developmental complications, on the availability of early intervention services under this subchapter and of services under section 1419 of this title, and procedures for assisting such sources in disseminating such information to parents of infants and toddlers with disabilities.

(7) A central directory that includes information on early intervention services, resources, and experts available in the State and research and demonstration projects being conducted in the State.

(8) A comprehensive system of personnel development, including the training of paraprofessionals and the training of primary referral sources with respect to the basic components of early intervention services available in the State that--

(A) shall include--

(i) implementing innovative strategies and activities for the recruitment and retention of early education service providers;

(ii) promoting the preparation of early intervention providers who are fully and appropriately qualified to provide early intervention services under this subchapter; and

(iii) training personnel to coordinate transition services for infants and toddlers served under this subchapter from a program providing early intervention services under this subchapter and under subchapter II (other than section 1419 of this title), to a preschool program receiving funds under section 1419 of this title, or another appropriate program; and

(B) may include--

(i) training personnel to work in rural and inner-city areas; and

(ii) training personnel in the emotional and social development of young children.

(9) Policies and procedures relating to the establishment and maintenance of qualifications to ensure that personnel necessary to carry out this subchapter are appropriately and adequately prepared and trained, including the establishment and maintenance of qualifications that are consistent with any State-approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which such personnel are providing early intervention services, except that nothing in this subchapter (including this paragraph) shall be construed to prohibit the use of paraprofessionals and assistants who are appropriately trained and supervised in accordance with State law, regulation, or written policy, to assist in the provision of early intervention services under this subchapter to infants and toddlers with disabilities.

(10) A single line of responsibility in a lead agency designated or established by the Governor for carrying out--

(A) the general administration and supervision of programs and activities receiving assistance under section 1433 of this title, and the monitoring of programs and activities used by the State to carry out this subchapter, whether or not such programs or activities are receiving assistance made available under section 1433 of this title, to ensure that the State complies with this subchapter;

§ 1435. Requirements for statewide system, 20 USCA § 1435

(B) the identification and coordination of all available resources within the State from Federal, State, local, and private sources;

(C) the assignment of financial responsibility in accordance with section 1437(a)(2) of this title to the appropriate agencies;

(D) the development of procedures to ensure that services are provided to infants and toddlers with disabilities and their families under this subchapter in a timely manner pending the resolution of any disputes among public agencies or service providers;

(E) the resolution of intra- and interagency disputes; and

(F) the entry into formal interagency agreements that define the financial responsibility of each agency for paying for early intervention services (consistent with State law) and procedures for resolving disputes and that include all additional components necessary to ensure meaningful cooperation and coordination.

(11) A policy pertaining to the contracting or making of other arrangements with service providers to provide early intervention services in the State, consistent with the provisions of this subchapter, including the contents of the application used and the conditions of the contract or other arrangements.

(12) A procedure for securing timely reimbursements of funds used under this subchapter in accordance with section 1440(a) of this title.

(13) Procedural safeguards with respect to programs under this subchapter, as required by section 1439 of this title.

(14) A system for compiling data requested by the Secretary under section 1418 of this title that relates to this subchapter.

(15) A State interagency coordinating council that meets the requirements of section 1441 of this title.

(16) Policies and procedures to ensure that, consistent with section 1436(d)(5) of this title--

(A) to the maximum extent appropriate, early intervention services are provided in natural environments; and

(B) the provision of early intervention services for any infant or toddler with a disability occurs in a setting other than a natural environment that is most appropriate, as determined by the parent and the individualized family service plan team, only when early intervention cannot be achieved satisfactorily for the infant or toddler in a natural environment.

(b) Policy

In implementing subsection (a)(9), a State may adopt a policy that includes making ongoing good-faith efforts to recruit and hire appropriately and adequately trained personnel to provide early intervention services to infants and toddlers with disabilities, including, in a geographic area of the State where there is a shortage of such personnel, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet the standards described in subsection (a)(9).

(c) Flexibility to serve children 3 years of age until entrance into elementary school

(1) In general

A statewide system described in section 1433 of this title may include a State policy, developed and implemented jointly by the lead agency and the State educational agency, under which parents of children with disabilities who are eligible for services under section 1419 of this title and previously received services under this subchapter, may choose the continuation of early intervention services (which shall include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) for such children under this subchapter until such children enter, or are eligible under State law to enter, kindergarten.

(2) Requirements

If a statewide system includes a State policy described in paragraph (1), the statewide system shall ensure that--

(A) parents of children with disabilities served pursuant to this subsection are provided annual notice that contains--

(i) a description of the rights of such parents to elect to receive services pursuant to this subsection or under subchapter II; and

(ii) an explanation of the differences between services provided pursuant to this subsection and services provided under subchapter II, including--

(I) types of services and the locations at which the services are provided;

(II) applicable procedural safeguards; and

(III) possible costs (including any fees to be charged to families as described in section 1432(4)(B) of this title), if any, to parents of infants or toddlers with disabilities;

(B) services provided pursuant to this subsection include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills;

(C) the State policy will not affect the right of any child served pursuant to this subsection to instead receive a free appropriate public education under subchapter II;

(D) all early intervention services outlined in the child's individualized family service plan under section 1436 of this title are continued while any eligibility determination is being made for services under this subsection;

(E) the parents of infants or toddlers with disabilities (as defined in section 1432(5)(A) of this title) provide informed written consent to the State, before such infants or toddlers reach 3 years of age, as to whether such parents intend to choose the continuation of early intervention services pursuant to this subsection for such infants or toddlers;

(F) the requirements under section 1437(a)(9) of this title shall not apply with respect to a child who is receiving services in accordance with this subsection until not less than 90 days (and at the discretion of the parties to the conference, not more than 9 months) before the time the child will no longer receive those services; and

(G) there will be a referral for evaluation for early intervention services of a child who experiences a substantiated case of trauma due to exposure to family violence (as defined in section 10402 of Title 42).

### (3) Reporting requirement

If a statewide system includes a State policy described in paragraph (1), the State shall submit to the Secretary, in the State's report under section 1437(b)(4)(A) of this title, a report on the number and percentage of children with disabilities who are eligible for services under section 1419 of this title but whose parents choose for such children to continue to receive early intervention services under this subchapter.

### (4) Available funds

If a statewide system includes a State policy described in paragraph (1), the policy shall describe the funds (including an identification as Federal, State, or local funds) that will be used to ensure that the option described in paragraph (1) is available to eligible children and families who provide the consent described in paragraph (2)(E), including fees (if any) to be charged to families as described in section 1432(4)(B) of this title.

### (5) Rules of construction

#### (A) Services under subchapter II

If a statewide system includes a State policy described in paragraph (1), a State that provides services in accordance with this subsection to a child with a disability who is eligible for services under section 1419 of this title shall not be required to provide the child with a free appropriate public education under subchapter II for the period of time in which the child is receiving services under this subchapter.

#### (B) Services under this subchapter

Nothing in this subsection shall be construed to require a provider of services under this subchapter to provide a child served under this subchapter with a free appropriate public education.

§ 1435. Requirements for statewide system, 20 USCA § 1435

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**CREDIT(S)**

(Pub.L. 91-230, Title VI, § 635, as added Pub.L. 108-446, Title I, § 101, Dec. 3, 2004, 118 Stat. 2747; amended Pub.L. 111-320, Title II, § 202(b), Dec. 20, 2010, 124 Stat. 3509.)

20 U.S.C.A. § 1435, 20 USCA § 1435

Current through P.L. 113-163 (excluding P.L. 113-128) approved 8-8-14

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United States Code Annotated  
Title 20. Education  
Chapter 33. Education of Individuals with Disabilities (Refs & Annos)  
Subchapter III. Infants and Toddlers with Disabilities

20 U.S.C.A. § 1436

§ 1436. Individualized family service plan

Effective: July 1, 2005  
Currentness

(a) Assessment and program development

A statewide system described in section 1433 of this title shall provide, at a minimum, for each infant or toddler with a disability, and the infant's or toddler's family, to receive--

- (1) a multidisciplinary assessment of the unique strengths and needs of the infant or toddler and the identification of services appropriate to meet such needs;
- (2) a family-directed assessment of the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of the infant or toddler; and
- (3) a written individualized family service plan developed by a multidisciplinary team, including the parents, as required by subsection (e), including a description of the appropriate transition services for the infant or toddler.

(b) Periodic review

The individualized family service plan shall be evaluated once a year and the family shall be provided a review of the plan at 6-month intervals (or more often where appropriate based on infant or toddler and family needs).

(c) Promptness after assessment

The individualized family service plan shall be developed within a reasonable time after the assessment required by subsection (a)(1) is completed. With the parents' consent, early intervention services may commence prior to the completion of the assessment.

(d) Content of plan

The individualized family service plan shall be in writing and contain--

- (1) a statement of the infant's or toddler's present levels of physical development, cognitive development, communication development, social or emotional development, and adaptive development, based on objective criteria;

(2) a statement of the family's resources, priorities, and concerns relating to enhancing the development of the family's infant or toddler with a disability;

(3) a statement of the measurable results or outcomes expected to be achieved for the infant or toddler and the family, including pre-literacy and language skills, as developmentally appropriate for the child, and the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the results or outcomes is being made and whether modifications or revisions of the results or outcomes or services are necessary;

(4) a statement of specific early intervention services based on peer-reviewed research, to the extent practicable, necessary to meet the unique needs of the infant or toddler and the family, including the frequency, intensity, and method of delivering services;

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(5) a statement of the natural environments in which early intervention services will appropriately be provided, including a justification of the extent, if any, to which the services will not be provided in a natural environment;

(6) the projected dates for initiation of services and the anticipated length, duration, and frequency of the services;

(7) the identification of the service coordinator from the profession most immediately relevant to the infant's or toddler's or family's needs (or who is otherwise qualified to carry out all applicable responsibilities under this subchapter) who will be responsible for the implementation of the plan and coordination with other agencies and persons, including transition services; and

(8) the steps to be taken to support the transition of the toddler with a disability to preschool or other appropriate services.

(e) Parental consent

The contents of the individualized family service plan shall be fully explained to the parents and informed written consent from the parents shall be obtained prior to the provision of early intervention services described in such plan. If the parents do not provide consent with respect to a particular early intervention service, then only the early intervention services to which consent is obtained shall be provided.

**CREDIT(S)**

(Pub.L. 91-230, Title VI, § 636, as added Pub.L. 108-446, Title I, § 101, Dec. 3, 2004, 118 Stat. 2751.)

Notes of Decisions (1)

20 U.S.C.A. § 1436, 20 USCA § 1436

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United States Code Annotated  
Title 20. Education  
Chapter 33. Education of Individuals with Disabilities (Refs & Annos)  
Subchapter III. Infants and Toddlers with Disabilities

20 U.S.C.A. § 1437

§ 1437. State application and assurances

Effective: July 1, 2005

Currentness

(a) Application

A State desiring to receive a grant under section 1433 of this title shall submit an application to the Secretary at such time and in such manner as the Secretary may reasonably require. The application shall contain--

(1) a designation of the lead agency in the State that will be responsible for the administration of funds provided under section 1433 of this title;

(2) a certification to the Secretary that the arrangements to establish financial responsibility for services provided under this subchapter pursuant to section 1440(b) of this title are current as of the date of submission of the certification;

(3) information demonstrating eligibility of the State under section 1434 of this title, including--

(A) information demonstrating to the Secretary's satisfaction that the State has in effect the statewide system required by section 1433 of this title; and

(B) a description of services to be provided to infants and toddlers with disabilities and their families through the system;

(4) if the State provides services to at-risk infants and toddlers through the statewide system, a description of such services;

(5) a description of the uses for which funds will be expended in accordance with this subchapter;

(6) a description of the State policies and procedures that require the referral for early intervention services under this subchapter of a child under the age of 3 who--

(A) is involved in a substantiated case of child abuse or neglect; or

(B) is identified as affected by illegal substance abuse, or withdrawal symptoms resulting from prenatal drug exposure;

(7) a description of the procedure used to ensure that resources are made available under this subchapter for all geographic areas within the State;

(8) a description of State policies and procedures that ensure that, prior to the adoption by the State of any other policy or procedure necessary to meet the requirements of this subchapter, there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of infants and toddlers with disabilities;

(9) a description of the policies and procedures to be used--

(A) to ensure a smooth transition for toddlers receiving early intervention services under this subchapter (and children receiving those services under section 1435(c) of this title) to preschool, school, other appropriate services, or exiting the program, including a description of how--

(i) the families of such toddlers and children will be included in the transition plans required by subparagraph (C); and

(ii) the lead agency designated or established under section 1435(a)(10) of this title will--

(I) notify the local educational agency for the area in which such a child resides that the child will shortly reach the age of eligibility for preschool services under subchapter II, as determined in accordance with State law;

(II) in the case of a child who may be eligible for such preschool services, with the approval of the family of the child, convene a conference among the lead agency, the family, and the local educational agency not less than 90 days (and at the discretion of all such parties, not more than 9 months) before the child is eligible for the preschool services, to discuss any such services that the child may receive; and

(III) in the case of a child who may not be eligible for such preschool services, with the approval of the family, make reasonable efforts to convene a conference among the lead agency, the family, and providers of other appropriate services for children who are not eligible for preschool services under subchapter II, to discuss the appropriate services that the child may receive;

(B) to review the child's program options for the period from the child's third birthday through the remainder of the school year; and

(C) to establish a transition plan, including, as appropriate, steps to exit from the program;

(10) a description of State efforts to promote collaboration among Early Head Start programs under section 9840a of Title 42, early education and child care programs, and services under this subchapter; and

(11) such other information and assurances as the Secretary may reasonably require.

(b) Assurances

The application described in subsection (a)--

(1) shall provide satisfactory assurance that Federal funds made available under section 1443 of this title to the State will be expended in accordance with this subchapter;

(2) shall contain an assurance that the State will comply with the requirements of section 1440 of this title;

(3) shall provide satisfactory assurance that the control of funds provided under section 1443 of this title, and title to property derived from those funds, will be in a public agency for the uses and purposes provided in this subchapter and that a public agency will administer such funds and property;

(4) shall provide for--

(A) making such reports in such form and containing such information as the Secretary may require to carry out the Secretary's functions under this subchapter; and

(B) keeping such reports and affording such access to the reports as the Secretary may find necessary to ensure the correctness and verification of those reports and proper disbursement of Federal funds under this subchapter;

(5) provide satisfactory assurance that Federal funds made available under section 1443 of this title to the State--

(A) will not be commingled with State funds; and

(B) will be used so as to supplement the level of State and local funds expended for infants and toddlers with disabilities and their families and in no case to supplant those State and local funds;

(6) shall provide satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to ensure proper disbursement of, and accounting for, Federal funds paid under section 1443 of this title to the State;

(7) shall provide satisfactory assurance that policies and procedures have been adopted to ensure meaningful involvement of underserved groups, including minority, low-income, homeless, and rural families and children with disabilities who are wards of the State, in the planning and implementation of all the requirements of this subchapter; and

(8) shall contain such other information and assurances as the Secretary may reasonably require by regulation.

(c) Standard for disapproval of application

§ 1437. State application and assurances, 20 USCA § 1437

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The Secretary may not disapprove such an application unless the Secretary determines, after notice and opportunity for a hearing, that the application fails to comply with the requirements of this section.

(d) Subsequent State application

If a State has on file with the Secretary a policy, procedure, or assurance that demonstrates that the State meets a requirement of this section, including any policy or procedure filed under this subchapter (as in effect before December 3, 2004), the Secretary shall consider the State to have met the requirement for purposes of receiving a grant under this subchapter.

(e) Modification of application

An application submitted by a State in accordance with this section shall remain in effect until the State submits to the Secretary such modifications as the State determines necessary. This section shall apply to a modification of an application to the same extent and in the same manner as this section applies to the original application.

(f) Modifications required by the Secretary

The Secretary may require a State to modify its application under this section, but only to the extent necessary to ensure the State's compliance with this subchapter, if--

- (1) an amendment is made to this chapter, or a Federal regulation issued under this chapter;
- (2) a new interpretation of this chapter is made by a Federal court or the State's highest court; or
- (3) an official finding of noncompliance with Federal law or regulations is made with respect to the State.

**CREDIT(S)**

(Pub.L. 91-230, Title VI, § 637, as added Pub.L. 108-446, Title I, § 101, Dec. 3, 2004, 118 Stat. 2752.)

Notes of Decisions (2)

20 U.S.C.A. § 1437, 20 USCA § 1437

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