



Advocates for Children of New York

Protecting every child's right to learn

August 2, 2013

Office of Child Care
Administration for Children and Families
370 L'Enfant Promenade SW
Washington, DC 20024
Attention: Cheryl Vincent, Office of Child Care

RE: Proposed Amendments to Child Care and Development Fund (CCDF)
Regulations, Docket Number ACF-2013-0001

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Advocates for Children of New York (AFC) appreciates the opportunity to provide written comments concerning the proposed amendments to the Child Care and Development Fund (CCDF) regulations. Since 1971, AFC has worked to promote access to the best education New York can provide for all students, especially students of color and students from low-income backgrounds. Through our Early Childhood Education Project, we work to ensure that young children, especially those with developmental delays and disabilities, receive the services they need to make academic, social, and emotional progress and enter kindergarten prepared to succeed. We provide legal representation to help low-income parents obtain appropriate special education services, which often take place at child care centers. We also conduct trainings and workshops for families and child care providers, offer technical assistance to child care providers so they can help families navigate the special education system, and engage in policy initiatives to increase access to high-quality early childhood education. Our considerable experience in these endeavors is the basis for our comments on these proposed changes.

We strongly support President Obama's vision of expanded access to quality early childhood education programs, and we recognize that the Child Care and Development Fund is an important component of this plan. By the time children enter kindergarten, children from lower socioeconomic backgrounds lag significantly behind children from higher socioeconomic backgrounds in academic skills. High-quality early childhood education programs are proven to help fill this gap. Every day, we work with low-income families in New York City who depend upon full-day child care so their children can develop essential academic and social skills while their parents work, go to school, and support their families. Many of these families use child care vouchers through the CCDF or send their children to center-based programs funded by CCDF grants. The CCDF, in combination with Head Start, pre-kindergarten, and other early learning programs, represents a vital investment in our nation's low-income families.



We appreciate that the proposed amendments emphasize the CCDF's dual purpose: both supporting low-income working parents and also promoting the development of young children through high-quality, educational child care programs. We agree that access and quality must both be priorities, and we support the four broad goals of the proposed amendments: improving health and safety; improving quality of care; establishing family friendly policies; and strengthening program integrity.

We wish to emphasize, however, that all of these worthy goals require significant funding in order to make them a reality. We support many of the changes outlined in these proposed regulations, such as the use of quality rating and improvement systems and the additional oversight of CCDF-funded programs, but we also know that these changes will increase the costs that Lead Agencies, grantees, and child care providers are expected to bear. These increased expectations for CCDF recipients come at a time when budgets are already stretched thin due to recent cuts. We are deeply concerned that states will be forced to make difficult decisions and cut back on the number of families receiving child care subsidies in order to comply with new quality, health, and safety regulations. Such cuts in subsidies would be devastating for low-income families whose children need access to high-quality early childhood education programs to help them prepare for kindergarten. We will continue to work with coalitions of advocacy organizations to demand increased funding for quality early childhood education at the local, state, and federal levels.

In addition, while the regulations place a welcome focus on the development of young children, we hope the federal government will pay particular attention to the developmental needs of young children with delays and disabilities. Research demonstrates that children undergo the vast majority of brain development before the age of 5, so services to address delays can make the biggest impact in the early years. Many young children with delays or disabilities can participate in child care and early learning programs alongside their non-disabled peers if they are provided with appropriate supports and services. Under the law, a program cannot exclude a child due to his or her disability and must accommodate the child's needs. Unfortunately, we have heard of child care programs telling parents of children with disabilities that their programs are not equipped to serve their children, instead of helping to get services in place for children with disabilities so they can succeed in a child care setting. Some parents have trouble locating a program that will enroll their child because of their child's needs. Other children have been placed on truncated schedules or even discharged from their child care programs because their disability causes them to exhibit challenging behaviors. It is critical that the CCDF regulations provide guidance to funding recipients on how to create inclusive programs that provide opportunities for children with delays and disabilities to learn alongside their typically developing peers.



We therefore offer the following comments and suggestions on the proposed regulations, based on our on-the-ground experience. Our suggestions are largely focused on two overarching goals that are of vital importance to the clients we serve: making it easier for low-income families to access subsidized child care so that their children can receive a high-quality early childhood education, and improving the ability of child care programs to serve children with special needs.

Section 98.14(a)(1)(C): Coordination with agencies providing special education

We strongly support the added language that specifies that in developing their CCDF plans, Lead Agencies must coordinate with state agencies responsible for educational services provided under Parts B and C of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400). It is critical for Lead Agencies to work in partnership with Early Intervention and preschool special education programs to ensure that children with disabilities are included in child care programs and receive the supports and services they need. This added language is a welcome change that makes this obligation explicit.

Sections 98.16(g)(1) and Section 98.44: Definition of “special needs”

The existing regulations specify that a Lead Agency’s CCDF Plan must include a definition of “special needs child,” section 98.16(g)(1), and that Lead Agencies shall give priority to “children with special needs” in providing direct child care services to low-income working families, section 98.44(b). These sections have not been modified in the proposed regulations. However, we recommend that these sections be amended to clarify that the definition of a child with special needs must include children who qualify for Early Intervention or preschool special education services. Currently, New York’s definition of children with special needs does not capture all of the young children eligible for services through the Individuals with Disabilities Education Act. Therefore, we recommend the following language: “*The definition of a special needs child shall include, but not be limited to, any child found eligible for services under Part B or C of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400).*”

Section 98.16(g)(6): Including period of job search

We support the requirement that Lead Agencies’ CCDF plans define “working” to include a period of job search. Young children are in danger of falling behind in their learning and skill development if they experience gaps in their early childhood education programs, so they need continuous, stable programs even if their parents lose their jobs. Therefore, we support the provision in the proposed regulations that will require Lead Agencies to extend eligibility to working parents receiving a subsidy who later become unemployed. However, we urge you to also require Lead Agencies to provide child care subsidies to parents who are looking for work even if



they have not already been receiving CCDF subsidies. Unemployed parents often cannot afford to place their children in private preschool programs, so it is critical that they have access to child care programs while looking for work. Without access to child care, their young children would miss out on the important academic and social benefits of early childhood education programs. We hope the regulations will require an expansive definition of the job search period to better support low-income parents in their efforts to find work and to better help their children prepare for kindergarten.

Section 98.20(b): 12-month eligibility period

We strongly support the proposed rule requiring Lead Agencies to re-determine a family's eligibility no sooner than 12 months after the initial determination or most recent re-determination. This 12-month eligibility period will provide essential continuity for children in early childhood education programs, allowing them to develop strong relationships with their teachers and peers and make steady academic and social progress. The 12-month eligibility period will also provide stability and predictability for parents and reduce the administrative burdens on Lead Agencies. We also support the recommendation that Lead Agencies coordinate eligibility requirements with other programs serving low-income families, such as Head Start. We suggest that the regulations give Lead Agencies flexibility to depart from a 12-month eligibility re-determination period only in situations where it will align the eligibility requirements with those of another program. In general, we support the emphasis on streamlining eligibility procedures to minimize reporting requirements, reduce the burden on families receiving CCDF subsidies, and promote stability for children in early childhood settings where they can make educational progress.

Section 98.20(d): Developmental needs of the child

We strongly support the intent of the proposed language requiring Lead Agencies to consider the developmental needs of the child when authorizing child care services. We appreciate that this language demonstrates that the CCDF is a child development program, not just a work support program. This language will clarify that, for example, a Lead Agency can authorize full-day child care to allow a child to enroll in a high-quality educational program, even if the parent's work schedule ends earlier than the child care program. We are very glad that this language will give Lead Agencies more flexibility to authorize child care arrangements that best promote a child's learning and educational growth.

However, we are concerned that, without additional clarification, this proposed language could also be used to limit access to child care programs for children with challenging behaviors, special needs, or developmental delays. Unfortunately, we have seen child care programs claim that, based on a child's needs, the child should not participate in a child care program for the full day, even when the child's parent



needs full-day care. We are very concerned that the proposed regulation could have the unintended consequence of limiting a child’s attendance based on a claim that the child is not ready for a full-day program when the child may simply need additional supports or services to succeed in a full-day child care program. Although the regulations prohibit grantees from discriminating against children on the basis of disability when establishing eligibility conditions or priority rules, we have seen programs cite a child’s developmental needs as a basis for refusing to enroll the child or for placing the child on a truncated schedule. Since we know that some programs already misunderstand their obligation to serve children with delays or disabilities, we do not want the proposed language about considering a child’s developmental needs to give them additional cover to deny services.

Therefore, we urge you to add the following sentences at the end of section 98.20(d): *“Developmental needs may include, but are not limited to, special needs or developmental delays. Nothing in this section shall be construed to limit access to child care services for children based on their developmental needs.”* Alternatively, you could amend proposed section 98.20(d) to read: *“Lead Agencies are not restricted to limiting authorized child care services based on the work, training, or educational schedule of the parent(s), and may provide children with child care services for additional hours to promote their development.”* We hope this proposed language will clarify that a child’s developmental needs may be taken into account only to *increase* the child’s access to subsidized child care services, and may not be taken into account to limit access.

Section 98.33: Consumer education

We support the proposed consumer education revisions, including the requirement of a consumer education website and the use of quality indicators. However, we have a few suggestions regarding this section, based on our direct experience helping low-income families navigate available child care options.

First, we applaud the fact that section 98.33(a) requires that the website must be “user-friendly” and “easy-to understand.” It is critical that the materials are written in parent-friendly language and include easy-to-use links to definitions of all key terms. However, we are concerned that the consumer education section of the regulations fails to address the issue of language access. Many low-income families who rely on CCDF subsidies are immigrants who cannot understand written material in English. In order to accomplish the stated goal of being “user-friendly,” the regulations should require Lead Agencies to translate the website into all major languages spoken by the population that the Lead Agency serves.



Second, section 98.33(a) should clarify that in addition to providing information on specific providers, Lead Agencies should also provide information on the different categories of child care available to families. For example, Lead Agencies should explain the difference between using a licensed provider and a non-licensed provider.

Third, in section 98.33(b), the requirements for a system of quality indicators should take into account the programs' abilities to serve especially vulnerable populations. The provider-specific information should include the programs' experience and qualifications in serving children with special needs and developmental delays. The provider-specific information should also include any other languages spoken by program staff and experience serving English Language Learners. The families we work with are often searching for programs that are best equipped to meet their children's special needs. The consumer education website and quality indicators should help guide these families to programs where staff have experience and demonstrated success in serving children with those needs.

Finally, we wish to emphasize that Local Agencies will require significant funding to successfully implement a consumer education website and a system of quality indicators. We strongly support these initiatives and believe they are a worthwhile use of funds, but we do not want them to be implemented by cutting subsidies to low-income families and reducing the number of children who have access to early childhood education programs. We believe this area of the proposed regulations is a powerful example of the need for increased child care funding so Lead Agencies are not forced to make a trade-off between access and quality.

Section 98.41(a)(3): Pre-service or orientation training

We support the fact that the proposed revisions elaborate on the requirement for child care providers to undergo "minimum health and safety training." We agree that it is necessary to have a uniform set of standards to ensure that child care providers are equipped to meet the needs of children in their program. In particular, we strongly support the requirement that all providers receive training on caring for children with special health care needs, mental health needs, and developmental disabilities, section 98.41(a)(3)(xii). We work with parents of children with developmental delays who need inclusive programs where they can receive the necessary support while interacting with typically developing peers. New York State does not currently require all providers to have training in caring for children with special needs, and we support making this a requirement under the regulations. We also strongly support the requirement that providers receive training in child development, 98.41(a)(3)(xiii), which will help them identify children who are not meeting developmental milestones.



We would suggest adding some more specific language to these sections to further the goal of creating inclusive programs that serve children with developmental delays. First, in 98.41(a)(3)(xii), we propose adding the following italicized language: “Caring for children with special health care needs, mental health needs, and developmental disabilities in compliance with the Americans with Disabilities (ADA) Act, *Section 504 of the Rehabilitation Act, and the Individuals with Disabilities Education Act, including the characteristics of common developmental disabilities and strategies for supporting children with behavioral challenges.*” We recognize that Lead Agencies need flexibility to create training programs and that the regulations should not impose training requirements that are too onerous. However, in our experience, providers need training on the features of autism and other specific disabilities that they are likely to encounter. In addition, we have seen cases where child care providers have told parents they cannot serve children who exhibit challenging behaviors due to social and emotional delays. Since it is illegal for providers to exclude a child due to a disability, the best solution to this common issue is for providers to receive training on how to support children with challenging behaviors in their program.

In addition, in 98.41(a)(3)(xiii), we propose adding the following italicized language: “Child development, including knowledge of stages and milestones of all developmental domains appropriate for the ages of children receiving services, *how to recognize suspected developmental delays and disabilities, procedures for referring children for Early Intervention or special education evaluations when delays are suspected, and procedures for obtaining Early Intervention and special education services.*” In our experience, child care providers play a critical role in identifying children who are not meeting developmental milestones and helping their parents obtain an evaluation for special education services. The Early Intervention and preschool special education process can be very difficult for families and providers to navigate. We believe all providers need training in how these systems work as they are an essential link in explaining the process to families and helping them access evaluations and services. Often, these services are critical to children’s success in child care programs, so child care providers must know how to help families access such services.

Section 98.51(a)(2): Quality improvement

We support the changes to this section that provide more specific guidance to Lead Agencies on allowable quality improvement activities. However, we recommend that this section explicitly address the need for programs to improve their ability to serve children with special needs. In our experience working with low-income families of children with developmental delays and disabilities, we have found that programs need significant additional support in order to be fully inclusive.



First, we recommend specifying that quality improvement activities should include steps to improve services for children with delays and disabilities. Under section 98.51(a)(2)(ii), we recommend adding the following italicized language: “Establishment and implementation of age-appropriate learning and development guidelines for children of all ages, including infants, toddlers, and school-age children, *and establishment and implementation of guidelines for serving children with special needs.*”

Second, we recommend that quality improvement systems evaluate programs in part based on their success at serving children with delays and disabilities. Under section 98.51(a)(2)(iii), which sets out suggested elements of a quality improvement system, we recommend adding the following italicized language to provision A: “Establishment of program standards that define expectations for quality and indicators of different levels of quality appropriate to the provider setting, *and that assess the program’s ability to serve children with special needs.*”

Third, we also recommend that professional development systems help child care providers develop the skills and knowledge that they need to better serve children with delays and disabilities. Under section 98.51(a)(2)(iv), which sets out suggested elements of a professional development system, we recommend adding the following italicized language to provision C: “Conducting professional development assessments to build capacity of higher education systems and other training institutions to meet the diverse needs of the child care workforce and address the full range of development and needs of children, *including children with special needs.*”

Finally, we are pleased to see that section 98.51(a)(2)(v), which discusses the infrastructure of support for child care providers, explicitly recognizes the importance of building providers’ capacity to serve “children with special needs, dual language learners and other vulnerable children.” Our suggestions regarding the quality improvement section seek to incorporate a similar explicit recognition of the needs of children with delays and disabilities into other provisions.

Thank you for the opportunity to comment. Please do not hesitate to contact me at (212) 822-9543 or jrubin-wills@advocatesforchildren.org with any questions.

Sincerely,

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