

October 5, 2012

Dr. Barbara Minzenberg  
Ms. Kim Kottles  
Office of Child Development and Early Learning  
Bureau of Early Intervention Services  
333 Market Street  
6<sup>th</sup> Floor  
Harrisburg, PA 17126-0333  
Via Mail and Email to [kkottles@pa.gov](mailto:kkottles@pa.gov).

**RE: Public Comments on OCDEL's Proposed Announcement: Eligibility for Infant/Toddler and Preschool Early Intervention**

Dear Dr. Minzenberg and Ms. Kottles:

Thank you for the opportunity to comment on the Office of Child Development and Early Learning ("OCDEL")'s proposed policy contained within the Announcement: *Eligibility for Infant/Toddler and Preschool Early Intervention* ("proposed eligibility policy") released to the public in August 2012. Early intervention has produced positive outcomes for children with delays and disabilities and their families. OCDEL's own evidence shows clearly that increased investments in early intervention will be cost-effective in both the short term and the long run.

Public Citizens for Children and Youth ("PCCY") is a non-profit organization that has worked for 30 years to improve the lives and life chances of Southeastern Pennsylvania children through thoughtful and informed advocacy. The Public Interest Law Center of Philadelphia ("Law Center"), a nonprofit law firm dedicated to protecting the civil rights of children, joins with PCCY to comment on the proposed eligibility policy. We appreciate and will support many comments by other interested groups, and including the Statewide Coalition of Early Intervention Advocates.

We appreciate OCDEL's need to create an eligibility policy that is consistent with legal requirements, and which will result in a fair means of determining which young children are eligible to receive early intervention services. We recognize that participation rates show great variation statewide and that these variations seem not to be highly correlated with risk factors that would predict the need for early intervention. We are sympathetic with the state's desire to see standards implemented more equally in all counties. However, we oppose efforts to decrease eligibility by restricting the critical role of informed clinical opinion. We share concerns of Drs. Steven Bagnato and Robert Gallen regarding overreliance on testing methods that have limitations regarding their accuracy and applicability to young children.

With our appreciation for the current services, we write to address three critical concerns in the proposed eligibility policy.

## CONCERN NO. 1: INFORMED CLINICAL OPINION

The proposed eligibility policy states that Informed Clinical Opinion shall be used to establish eligibility, especially when there are no standardized measures or the measures are not appropriate for a child's chronological age or developmental area. Informed clinical opinion is expressly sanctioned in the IDEA as one of the three prongs of the evaluation and assessment process, and as an independent basis for eligibility. 34 C.F.R. §303.321(a)(3)(ii) expressly states: "Qualified personnel must use informed clinical opinion when conducting an evaluation and assessment of the child. **In addition, the lead agency must ensure that informed clinical opinion may be used as an independent basis** to establish a child's eligibility under this part even when other instruments do not establish eligibility. (Emphasis added). Pennsylvania law specifically allows informed clinical opinions. 55 Pa Code §4226.22(b).<sup>1</sup> Pennsylvania law is already somewhat confusing in that it suggests that informed clinical opinion is "in addition" rather than as an "independent basis" as required by the IDEA. The policy as written further implies that informed clinical opinion can only be used as an independent basis when there is a lack of standardized measures. We urge OCDEL and policy makers to fully and completely state the policy as the IDEA requires – that "informed clinical opinion may be used as an independent basis to establish a child's eligibility."

We suggest further that in Philadelphia, where both infant/toddler and preschool early intervention systems have struggled to move large numbers of children through the process from referral to receiving services in a timely manner, informed clinical opinion might be used more extensively. For example, because the evaluation process has long been a bottleneck for children making the transition to the preschool program, in many cases a clinical opinion from the child's IFSP can be used to establish eligibility and form the basis for the initial IEP, allowing services to proceed even while an evaluation is completed.

## CONCERN NO. 2: DEVELOPMENTAL DELAY AND SUB-DOMAINS

The proposed eligibility policy states that a child is eligible if she or he scores 1.5 standard deviations below the mean in "one or more of the developmental areas" or domains. However, the policy then goes on to discuss subtests using an example which is confusing and incorrect. The example suggests that a child with a score of 1.5 standard deviations below the mean in both expressive and receptive language would not qualify, without explaining in any way why this would be. Where a child is demonstrating the requisite standard deviation in both areas of communication, the child should be eligible. Perhaps the explanation is simply an incorrect one and if so, it should be corrected. Otherwise, if the Commonwealth is suggesting that a child will

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<sup>1</sup> See, 55 Pa. Code 4266.22(b) which states that "In addition to the diagnostic tools and standard tests specified in subsection (a)(1) and (2), informed clinical opinion shall be used to establish eligibility."

not qualify despite evidencing a 1.5 standard deviation in the developmental area of communication, both receptively and expressively, this would be contrary to law.

We also urge OCDEL to continue to allow the use of sub-domains to determine eligibility. These may be legitimate and appropriate depending upon the situation. Under the proposed eligibility policy, if the child had a significant deficiency in gross motor skills that affected the child's walking but was one sub-domain on a test – but on the same test could demonstrate the holding of a pencil for fine motor skills, the child might be deemed ineligible. When sub-domain scores are averaged together to obtain an overall domain score, real and important deficits and delays can be masked. We support Dr. Gallen's analysis of the potential harm caused by restricting the eligibility of children who demonstrate a significant delay in only one sub-domain. This is another area where informed clinical opinion can be used to clarify whether a child does indeed have a significant delay. We urge OCDEL and policy makers to maintain flexibility to allow eligibility determination in reliance on one sub-domain.

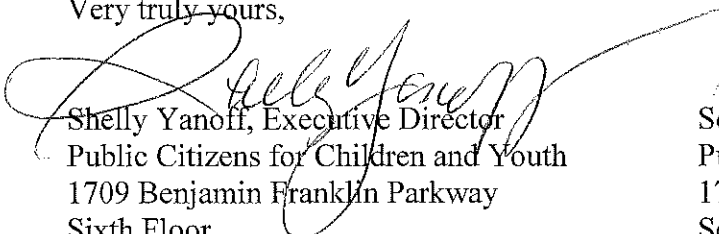
### CONCERN NO. 3: STANDARDIZED TESTING

The proposed policy's requirement that a "standardized evaluation tool" be used is contrary to the IDEA. The IDEA requires only "appropriate diagnostic instruments and procedures." 20 U.S.C. §1432(5)(A)(i). Pennsylvania law mirrors that language and does not require standardized measures. 55 Pa. Code §4226(a)(1). There is simply no legal basis for Pennsylvania to impose this more stringent requirement, which is contrary to best practice. Public Comments by Dr. Stephen Bagnato, and Dr. Robert Gallen support this view. We urge OCDEL and policy makers to delete references to requiring standardized evaluation tools.


Finally, we support the position of the Statewide Coalition of Early Intervention Advocates regarding presumptive eligibility based on a child's having a physical or mental disability that has a high probability of resulting in a developmental delay. This omission from the proposed policy is confusing and should be clarified.

Thank you for the opportunity to comment.

Very truly yours,



Shelly Yanoff, Executive Director  
Public Citizens for Children and Youth  
1709 Benjamin Franklin Parkway  
Sixth Floor  
Philadelphia, PA 19103  
PH: 215-563-5848  
[shellyyanoff@pccy.org](mailto:shellyyanoff@pccy.org)  
[www.pccy.org](http://www.pccy.org)



Sonja D. Kerr, Director Disability Rights  
Public Interest Law Ctr. of Philadelphia  
1709 Benjamin Franklin Parkway  
Second Floor  
Philadelphia, PA 19103  
PH: 267-546-1319  
[skerr@pilcop.org](mailto:skerr@pilcop.org)  
[www.pilcop.org](http://www.pilcop.org)