

## REQUIREMENTS FOR REGIONAL CENTER ELIGIBILITY HAVE CHANGED

As a result of a Trailer Bill AB 1762, which amended The Lanterman Developmental Disabilities Act, regional centers across the state are required to change eligibility criteria to align with federal standards. Three areas of substantial functional limitation in major life activities are required as of August 9, 2003, whereas only one or two areas were required previously. See Figure A. This new criteria only applies to people entering the regional center system after August 8, 2003. All regional center consumers who were determined eligible prior to August 9, 2003, will continue to be eligible unless the regional center has completed a redetermination of eligibility. See Figure C, part b. “Any reassessment of substantial disability for purposes of continuing eligibility shall utilize the same criteria under which the individual was originally made eligible.” Welfare and Institutions Code, Division 4.5, Chapter 1, Section 4512 (l). If the regional center challenges a consumer’s eligibility through a process called redetermination, the criteria under which the consumer originally became eligible must apply according to AB 1762. See Figure C.

For persons receiving assessment referrals after August 8, 2003, eligibility for services under the Lanterman Act require that a person meet the definition of a “Developmental Disability” as set forth in Division 4.5, Chapter 1, Section 4512 (a) of the W and I Code. See Figure B. To meet this definition, the consumer applicant must have a qualifying condition and have a substantial functional limitation in three or more of the seven areas of major life activity as listed in Figure A.

## FREQUENTLY ASKED QUESTIONS

- 1. What process is used to determine eligibility for persons over the age of three?** Any individual believed to have a developmental disability shall have an initial intake performed by the Regional Center within 15 working days following the request for assistance. A request for assistance can be made by anyone including a parent, a relative, a physician, etc. Information provided during the initial intake must include a description of available services provided by the regional center and other agencies, and must include a decision as to whether or not the regional center will provide a comprehensive assessment of the individual’s functioning level. Parents should ask for a written list of every type of service that the regional center can provide for people with autism. The regional centers must keep records of all of the requests for assistance that they receive. It is important that parents keep their own records of contacts with the regional center. Record date, time, detail of conversation and person’s name with whom you spoke for every communication.

If an assessment is offered, it must be completed within 120 days following initial intake and no longer than 60 days in the event that a person’s health or safety is at risk or if the person is exposed to significant further delay in development. According to AB 1752 (page 71) “On and after July 1, 2004, the assessment shall be performed within 60 days following intake and if unusual circumstances prevent the completion of assessment within 60 days following

intake, this assessment period may be extended by one 30-day period with the advance written approval of the department.” Assessments usually include the collection (with written permission from the parents) of known facts regarding the child and formal diagnostic testing. It is crucial for parents to give assessors a thorough and thoughtful account of their child’s developmental history and everyday behaviors. Detailed cataloging of the child’s areas of skill, deficits and excesses, with specific examples, will help parents to prepare for the battery of questions that most assessment professionals will ask. Chapter 5, Article 2, Section 4643 (b) of the W and I code states, “in determining if an individual meets the definition of developmental disability contained in subdivision (a) of Section 4512, the regional center may consider evaluations and tests, including, but not limited to, intelligence tests, adaptive functioning tests, neurological and neuropsychological tests, diagnostic tests performed by a physician, psychiatric tests, and other tests or evaluations that have been performed by, and are available from, other sources.” This means that any information that a parent may have that can be helpful in determining their child’s functioning level should be provided and this includes reports and evaluations performed by people independent of the regional center.

As required by law in 2002, the professionals at the California Department of Developmental Services, in collaboration with many experts in the autism community, developed best practice guidelines for Screening, Diagnosis and Assessment of autism spectrum disorders: You can find this document at [http://www.dds.ca.gov/publications/reports\\_publications.cfm](http://www.dds.ca.gov/publications/reports_publications.cfm). Section 2, Chapter 2 of the best practices guideline manual describes in detail the components of a quality comprehensive assessment including a list of autism specific diagnostic tests that should be acceptable to the regional center. After the assessments have been completed, the regional center clinical staff will review the child’s developmental history and assessment results and will then make a decision.

If a child is determined to be eligible, an Individual Program Plan (IPP) will be designed and implemented. When a child becomes eligible at one regional center, eligibility is continued at all other regional centers in California. If the child is denied eligibility, be sure to ask for the reasons for the denial in writing. If you disagree with the regional center’s decision, due process is available to appeal the decision. At this point, it is sensible to seek help from an attorney specializing in civil rights and education law. It is important to look for legal assistance from one who has legal experience working with the Lanterman Act. Also, contact the FEAT parent mentor in your area for further guidance. The regional center has a responsibility and an obligation to evaluate each child individually based upon his or her unique characteristics and not based upon a diagnostic label. People having PDD-NOS, Asperger’s, or autism spectrum disorders cannot be categorically denied eligibility by a regional center because of an individual regional center’s arbitrary decision to limit the number of people entering the developmental disabilities system.

2. **What is a qualifying condition for Regional Center services?**  
 “this term [developmental disability] shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, but shall not include other handicapping conditions that are solely physical in nature.” W and I code, Div., 4.5, Chapter 1, Section 4512 (a).
  
3. **Is the term “substantial disability” clearly defined?**  
 No. A comprehensive evaluation and assessment is required to determine if the individual’s functional abilities constitute a “substantial disability for that individual.” W and I code, Div., 4.5, Chapter 1, Section 4512 (a). The elements that represent a substantial disability for one individual could possibly differ from another individual.
  
4. **Does my child who has autism automatically become eligible?**  
 No. Your child must still meet the above requirements which includes having a qualifying condition and three areas of substantial functional disability.
  
5. **Do test scores alone determine if an individual is substantially disabled?**  
 No. Test scores are only one aspect of a comprehensive evaluation and assessment.
  
6. **I have been told that my child has a normal IQ, will he/she qualify for services?**  
 The child may be eligible if she/he is unable to sufficiently use her/his understanding of concrete information and apply it to everyday life. An assessment of functional and adaptive behavior is required to determine if he/she meets the three areas of substantial functional limitations in major life activities. Observe the child’s daily living skills carefully and make notes that you can share with the assessment professional.
  
7. **What do I do if I have been told that the regional center will not accept children with PDD-NOS and Aspergers?**  
 Call and/or write them again. Give specific details about the child’s behavior. Ask for an assessment. If there is a denial of a request for an assessment, be sure to get it in writing. If communications with intake personnel are not satisfactory, then ask to speak with a member of management. DDS will accept calls of concern or complaint regarding regional centers’ performance. Also, contact a FEAT parent mentor for assistance.
  
8. **What if my child has been eligible for a period of time and I have been told by a regional center’s staff that his/her condition is no longer eligible?**  
 Eligibility is not determined by the name of the child’s disability, but through a comprehensive, individualized assessment process. All serious issues should

be documented in writing. Ask for the reasons for the potential change in continuing eligibility and ask for any policy that the regional center staff person might be referring to, in writing. A change in eligibility is a complex issue that requires formal, comprehensive reassessment and notice from the regional center to initiate. Do not agree to any change in a child's services unless you honestly desire a change. Ask a FEAT mentor for help.

**9. Is the regional center allowed to deem my child ineligible after she/he has made progress?**

No. See figure C.

**10. What if my child is under three?**

Federal and state law applies to children under three, whereas, only state law applies to children over three. The criteria that determine eligibility for services for children under three focuses upon prevention of developmental delay and is significantly less restrictive. See Figure D. A confirmed diagnosis of a disability is not required for services to begin. If you have a child under three, then I hope that you would already be working with a parent mentor to help you through the first stretches of the road ahead.

**11. What has Alta California Regional Center said about the change in eligibility requirements?**

On September 10<sup>th</sup> at a meeting of the Family Advisory Committee, (an Alta Regional Center board of directors subcommittee), Jim Huyck, the executive director, made two promises after the discussion about the changes in eligibility criteria. First, he committed to publishing an article in the ALTA Action newsletter about the changes in eligibility criteria including an explanation that people will not categorically be denied assessments or eligibility based upon the diagnostic label of the suspected or known developmental disability. People will be assessed individually to determine eligibility. Secondly, Mr. Huyck will be responsible for sending a letter to all of the behavioral vendors who treat people with autism. This letter will discuss the new eligibility criteria and will correct misinformation and misunderstandings that are common amongst many of the vendors about PDD-NOS and Asperger's as conditions that are ineligible for regional center services. Mr. Huyck will send FEAT a copy of the letter sent to the vendors clarifying the regional center's duty to assess everyone individually.

If you would like to refer to this eligibility synopsis at a later time, you can find it on the FEAT website at [www.FEAT.org](http://www.FEAT.org). The Lanterman Act can be found at the California Department of Developmental Disabilities website at [www.dds.ca.gov](http://www.dds.ca.gov). Also see the Association of Regional Centers (ARCA) guidelines for determining eligibility at: [http://arcenet.org/ARCA\\_document.htm](http://arcenet.org/ARCA_document.htm)

This article is meant to be an overview and update about the subject of eligibility. Please refer to the Lanterman Act for more detail. This information is presented

for education purposes only. While I have tried to be factually correct with the finer points of the article, there may have been issues or facts inadvertently overlooked. Please send your comments or suggestions to my email box at [kmb@feat.org](mailto:kmb@feat.org).

Written by Kathleen Berry with a fact check review by several smart moms, dads, and professionals.

Figure A

LANTERMAN ACT DEFINITION OF SUBSTANTIAL DISABILITY  
WELFARE AND INSTITUTIONS CODE, DIVISION 4.5, CHAPTER 1, SECTION  
4512 (I).

“Substantial disability” means the existence of significant functional limitations in three or more of the following areas of major life activity, as determined by a regional center, and as appropriate to the age of the person.

1. Self-care;
2. Receptive and expressive language;
3. Learning;
4. Mobility;
5. Self-direction;
6. Capacity for independent living; and
7. Economic self-sufficiency

Figure B

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WELFARE AND INSTITUTIONS CODE, DIVISION 4.5, CHAPTER 1, SECTION 4512 (a)

“Developmental disability” means a disability which originates before an individual attains age 18, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy, epilepsy and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, but shall not include other handicapping conditions that are solely physical in nature.

Figure C

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WELFARE AND INSTITUTIONS CODE, CHAPTER 5, ARTICLE 2, SECTION 4643.5, (a) and (b)

- (a) If a consumer is or has been determined to be eligible for services by a regional center, he or she shall also be considered eligible by any other regional center if he or she has moved to another location within the state.
- (b) An individual who is determined by any regional center to have a developmental disability shall remain eligible for services from regional centers unless a regional center, following a comprehensive reassessment, concludes that the original determination that the individual has a developmental disability is clearly erroneous.

Figure D

**Chapter 2: Early Intervention Services**  
**SubChapter 1: General Provisions**

**Article 2: Eligibility for California's Early Start Program**

**Section 52020 - General**

An infant or toddler shall be eligible for early intervention services if he or she is between birth up to thirty-six months of age and meets one of the criteria specified in Section 52022 as determined by means of evaluation pursuant to Section 52082 of these regulations and needs early intervention services.

**Authority:** Sections 95009 and 95028, Government Code.

**Reference:** Section 1432(5), Title 20 United States Code; Sections 95014(a) and 95016, Government Code; and Section 303.16, Title 34 Code of Federal Regulations.

**Chapter 2: Early Intervention Services**  
**SubChapter 1: General Provisions**

**Article 2: Eligibility for California's Early Start Program**

**Section 52022 - Eligibility Criteria**

(a) Developmental Delay A developmental delay exists if there is a significant difference pursuant to 52082 between the infant's or toddler's current level of functioning and the expected level of development for his or her age in one or more of the following developmental areas:

- (1) Cognitive;
- (2) Physical: including fine and gross motor, vision, and hearing;
- (3) Communication;
- (4) Social or emotional;
- (5) Adaptive.

(b) Established Risk

(1) An established risk condition exists when an infant or toddler has a condition of known etiology which has a high probability of resulting in developmental delay; or,

(2) An established risk condition exists when an infant or toddler has a solely low incidence disability.

(c) High Risk for Developmental Disability

(1) High risk for a developmental disability exists when a multidisciplinary team determines that an infant or toddler has a combination of two or more of the following factors that requires early intervention services based on evaluation and assessment pursuant to section 52082 and section 52084:

(A) Prematurity of less than 32 weeks gestation and/or low birth weight of less than 1500 grams.

(B) Assisted ventilation for 48 hours or longer during the first 28 days of life.

(C) Small for gestational age: below the third percentile on the National Center for Health Statistics growth charts.

(D) Asphyxia neonatorum associated with a five minute Apgar

score of 0 to 5.

(E) Severe and persistent metabolic abnormality, including but not limited to hypoglycemia, acidemia, and hyperbilirubinemia in excess of the usual exchange transfusion level.

(F) Neonatal seizures or nonfebrile seizures during the first three years of life.

(G) Central nervous system lesion or abnormality.

(H) Central nervous system infection.

(I) Biomedical insult including, but not limited to, injury, accident or illness which may seriously or permanently affect developmental outcome.

(J) Multiple congenital anomalies or genetic disorders which may affect developmental outcome.

(K) Prenatal exposure to known teratogens.

(L) Prenatal substance exposure, positive infant neonatal toxicology screen or symptomatic neonatal toxicity or withdrawal.

(M) Clinically significant failure to thrive, including, but not limited to, weight persistently below the third percentile for age on standard growth charts or less than 85% of the ideal weight for age and/or acute weight loss or failure to gain weight with the loss of two or more major percentiles on the growth curve.

(N) Persistent hypotonia or hypertonia, beyond that otherwise associated with a known diagnostic condition.

(2) High risk for a developmental disability also exists when a multidisciplinary team determines that the parent of the infant or toddler is a person with a developmental disability and the infant or toddler requires early intervention services based on evaluation and assessment as specified in section 52082 and section 52084.

(d) A developmental delay shall not be determined based on:

(1) Temporary physical disability;

(2) Cultural or economic factors;

(3) The normal process of second language acquisition; or

(4) Manifestation of dialect and sociolinguistic variance.

**Authority:** Sections 95009 and 95028, Government Code.

**Reference:** Sections 1432(5), 1432(3) and 1435(a)(1), Title 20 United States Code; Sections 303.10, 303.16 and 303.300, Title 34 Code of Federal Regulations; Sections 95014 and 95028(b)(2), Government Code; and Section 4642, Welfare and Institutions Code.