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ADDING INSULT TO INJURY: CALIFORNIA'S CRUEL INDIFFERENCE TO THE DEVELOPMENTAL NEEDS OF ABUSED AND NEGLECTED CHILDREN FROM BIRTH TO THREE

I. INTRODUCTION

Imagine for a moment being little—smaller than you can consciously remember being. Imagine you are very new to life, say about three months old. You've been asleep and you are just waking up. . . in [your] crib. You open your eyes and see your short little arms and legs, new little fingers and toes that still seem to have a mind of their own. You have a big heavy head, a short neck, a big round tummy that's feeling very empty. As you [wake up], you feel [a] wet thing around your middle that is beginning to feel heavy and cold. Agitated, you begin to wiggle, move your arms, kick your feet, and you make a few soft sounds. Your eyes feel itchy, and you are getting this feeling in your tummy that you don't like. You begin to rub your eyes and make a few more sounds. To your surprise you hear a loud cry coming out of your mouth and your face is wet and your eyes begin to feel worse. Now you are crying and kicking and breathing hard. But no one comes. You look to see, but no one comes. And you are crying harder and your middle is hurting now with the air you've swallowed and you are hot and wet and screaming. Still no one comes. . . . You are scared and your stomach hurts and you are alone. Finally, you hear footsteps. A cold nipple is stuck in your mouth and you see the blurred back of someone leaving and you are sucking and turning to see who is walking away, and the bottle falls over. And your mouth is empty, your eyes are hot and wet, your stomach still hurts. You are screaming for someone to help. You hear footsteps and see the arms sweep down and the hand you hope is reaching for you sticks the nipple in again, but [too] hard [and] it hurts and you choke. The footsteps go away and you cry out. Your mouth looses the nipple and your arms are beating and your feet kick the mattress. You are hungry and angry and scared. You are screaming to an empty room.

Your need for food and attention followed by this response or a variation of it happens over and over again several times a day, at least thirty times in the course of a week. . . Sometimes you are picked up. But the faces are not happy when they see you and the voices are often loud and angry. You spend a lot of time alone. . . .¹

Babies are born with all the brain cells (neurons) they will ever have in life.² But, the brain cells are not connected or organized in a meaningful

1. ROBIN KARR-MORSE & MEREDITH S. WILEY, GHOSTS FROM THE NURSERY: TRACING THE ROOTS OF VIOLENCE 288-89 (1997).

2. NAT'L CLEARINGHOUSE ON CHILD ABUSE & NEGLECT INFO. CLEARINGHOUSE, U.S. DEP'T OF HEALTH AND HUMAN SERVICES, *In Focus: Understanding the Effects of Maltreatment on Early Brain Development*, at <http://www/calib.com/nccanch/pubs/focus/earlybrain>

way. The only connections present at birth allow for basic survival—breathing, heartbeat, eating, and sleeping.³ The infant cannot provide for her physical needs alone and would die without support from her parents.⁴ These essential parent-child interactions do more than provide for her physical needs; they provide the organizing framework for the brain.⁵ The parent providing “repetitive, consistent, predictable, and nurturing”⁶ responses to the infant’s needs over time organizes the infant’s brain in an ordered way.⁷ The child learns to trust that her parents will take care of her basic needs. The brain no longer has to focus on survival. This adequate foundation allows for the next region of the brain to develop and is the basis for all future learning.⁸ During each successive stage of brain development, the experiences of the very young child continue to organize the brain: “All learning—emotional, social, motor, cognitive—is accelerated and facilitated by” positive, consistent and patterned experiences.⁹

Surprisingly, children from birth to age three have the “highest victimization rate” for child abuse and neglect.¹⁰ “While positive experiences provide healthy brain development, negative experiences result in unhealthy development.”¹¹ Abused and neglected children have very different interactions with their parents. The infant’s cries for comfort, attention, food and diaper changing are “usually ignored or met with harsh words and rough

.cfm (Oct. 2001) [hereinafter *Understanding the Effects of Maltreatment*].

3. *Id.*

4. Bruce D. Perry, *Bonding & Attachment in Maltreated Children: Consequences of Emotional Neglect in Childhood: Part Two*, 19(2) CAPITOL COMMENTS 5, 5 (Mar. 2000) (Wis. Council on Children and Families, Wisconsin), available at http://www.childtrauma.org/ctamaterials/AttCar4_02.pdf (2001).

5. Bruce D. Perry, *The Neuroarcheology of Childhood Maltreatment: The Neurodevelopmental Costs of Adverse Childhood Events*, in THE COST OF MALTREATMENT: WHO PAYS? WE ALL DO 24 (Kris Franey, Robert Geffner, & Falconer eds., 2001), available at <http://www.childtrauma.org/ctamaterials/Neuroarcheology.asp> (July 27, 2000) [hereinafter *Neuroarcheology of Childhood Maltreatment*]. “[E]xperiences provide . . . the organizing framework for the brain.” *Id.*

6. Bruce D. Perry et al., *Curiosity, Pleasure and Play: A Neurodevelopmental Perspective*, 20 HAAEYC ADOVOCATE 9, 9 (Aug. 2000), available at <http://www.childtrauma.org/Curiosity.htm> (June 15, 2000) [hereinafter *Curiosity, Pleasure and Play*].

7. Comm. On Early Childhood, Adoption, and Dependent Care, American Academy of Pediatrics *Developmental Issues for Young Children in Foster Care*, 106 PEDIATRICS, 1145, 1146 (2000), available at <http://www.aap.org.policy/re0012.html> [hereinafter American Academy of Pediatrics]. “Optimal child development occurs when a spectrum of needs are consistently met over an extended period” of time. *Id.*

8. *Id.*

9. *Curiosity, Pleasure and Play*, *supra* note 6, at 9.

10. NAT’L CLEARINGHOUSE ON CHILD ABUSE & NEGLECT INFO. CLEARINGHOUSE, U.S. DEP’T OF HEALTH AND HUMAN SERVICES, *Highlights from Child Maltreatment 1999*, available at <http://www.calib.com/nccanch/pubs/factsheets/canstats.cfm> (last updated Apr. 12, 2001). “13.9 maltreatments for every 1000 children of this age population.” *Id.*

11. Janet Weinstein & Ricardo Weinstein, *Before It’s Too Late: Neurological Consequences of Child Neglect & Their Implications for Law & Social Policy*, 33 U. MICH. J. L. REFORM 561, 595 (2000).

handling.”¹² Over time, he receives inconsistent, unpredictable, and unnuturing responses. He does not learn to trust that his parents will provide for his basic needs; his brain remains focused on survival and the higher areas of the brain are not stimulated.¹³ The unstimulated areas of the brain are pruned (lost) leaving the child an inadequate foundation for future learning.¹⁴ The negative impacts of early abuse and neglect have lifelong effects and “can manifest . . . at any age in a variety of ways”¹⁵ including learning disabilities,¹⁶ “depression, self-destructive behavior, eating disorders, attention deficit disorders, drug and alcohol problems, sexual promiscuity,”¹⁷ “aggression, impulsiveness, delinquency [and] hyperactivity.”¹⁸

The brain is the “most plastic” before age three.¹⁹ This means that it is more flexible and able to “chang[e] in response to experiences, especially repetitive and patterned experiences.”²⁰ Providing abused and neglected infants and toddlers with consistent positive experiences can rewire the brain and reduce the negative impacts on future learning.²¹ This ensures abused and neglected infants and toddlers are on equal footing with their peers when they enter school.

No system currently exists in California to provide *all* infants and toddlers removed from their home because of abuse and/or neglect appropriate developmental services that provide positive, consistent experiences to reorganize the brain. It is vastly more effective to provide treatment while the brain is still plastic and capable of changing, rather than waiting until the child is older and the brain prunes the neural connections making the child less able to learn.

This Comment proposes that California has a duty to provide Early Intervention²² (EI) services to all children removed from their home because of abuse and neglect appropriate developmental services because they are at high-risk for developmental delays. The eligibility requirements for high-risk

12. Theresa Hawley, *Ounce of Prevention & Zero to Three, Starting Smart: How Early Experiences Affect Brain Development*, 5 (citations omitted), at http://www.ounceofprevention.org/publication/pdf/Starting_Smart.

13. *Understanding the Effects of Maltreatment*, *supra* note 2.

14. *Id.*

15. Martin H. Teicher, *Scars That Won't Heal: The Neurobiology of Child Abuse*, *SCIENTIFIC AMERICAN* Mar., 2002, at 68, 70.

16. Hawley, *supra* note 12, at 7.

17. *Id.* at 6.

18. Teicher, *supra* note 15, at 70.

19. Bruce D. Perry & John Marcellus, *The Impact of Child Abuse and Neglect on the Developing Brain* 7 *COLLEAGUES FOR CHILDREN* 5, 6 (1997) (Trail Trauma Acad. Version), available at <http://www.childtrauma.org/impact> [hereinafter *The Impact of Child Abuse and Neglect*].

20. *Id.*

21. *Id.*

22. EI is the required educational services provided to children under three years old who have developmental delays or are at risk of developing delays if appropriate intervention is not provided. See Section II *infra* for further explanation and discussion of EI.

must be changed to make removal from the home because of abuse or neglect a sole qualifying factor because of the profound impact it has on all areas of future functioning and because the severity of damage can be prevented with appropriate intervention. The Juvenile Court needs to take a more active role in facilitating the delivery of EI services. It needs to limit the parents' educational right to provide consent for EI and order that the child receive assessment and developmental services. It needs to oversee the delivery of appropriate developmental services.

Part II of this Comment provides the relevant EI and child-welfare laws. Part III discusses the difficulties with applying the laws to the developmental needs of abused and neglected children between birth and age three. Part IV provides the background in brain development and the effects of child abuse and neglect on the brain. Part V recommends changes necessary to ensure every child in California less than three years old entering the dependency system receives free appropriate developmental services under EI.

II. THE LAW

A. *Early Intervention System*

Public education is "perhaps the most important function of state and local governments."²³ President George W. Bush acknowledged this stating, "[o]ur challenge is to make sure every child has a fair chance to succeed in life."²⁴ He explained, "[t]hat is why education is the great civil rights issue of our time."²⁵ The Individuals with Disabilities Education Act (IDEA) ensures availability of a Free Appropriate Public Education (FAPE) for all children with disabilities.²⁶

In 1986, Congress established the Early Intervention (EI) Program for Infants and Toddlers²⁷—ensuring a FAPE for children birth to three with disabilities and those at risk for disabilities. Congress found "an urgent and substantial need [to both] enhance the development of infants and toddlers with disabilities *and* to minimize their potential for developmental delay."²⁸ Congress acknowledged the fact that EI services "reduce the educational costs to society"²⁹ because they reduce the need for special education ser-

23. *Brown v. Board of Education*, 347 U.S. 483, 493 (1954).

24. President George W. Bush, Weekly Radio Address, (Jan. 20, 2002) *quoted in* Sonya Ross, *Bush Praises King, Touts Education Bill; President Links Funding With Beliefs Cherished By Civil Rights Leader*, AKRON BEACON J., Jan. 20, 2002, at A9.

25. *Id.*

26. Individuals with Disabilities Education Act, 20 U.S.C. § 1400(d) (2002).

27. *See Twenty-Second Annual Report to Congress on the Implementation of the Individuals With Disabilities Act*, 2000 U.S. DEP'T OF EDUC. I, II-1. (2000). [hereinafter DEP'T OF EDUC. REPORT].

28. 20 U.S.C. § 1431(a)(1) (2000) (emphasis added).

29. *Id.* § 1431(a)(2).

vices when the child starts school.³⁰ An infant or toddler is eligible for services under IDEA if he 1) “experience[s] developmental delays . . . in one or more areas of cognitive, physical, communication, social or emotional, and adaptive development;”³¹ 2) “has a diagnosed physical or mental condition [with] a high probability of resulting in developmental delay;”³² and 3) “may also include, at the state’s discretion, at-risk-infants and toddlers.”³³ At risk infants and toddlers are “those who would be at risk of experiencing a substantial developmental delay”³⁴ in the absence of EI services. The Federal government left the responsibility to each state to define the at-risk population, but stated it “may include well-known biological and *environmental* factors” including “a history of abuse and neglect.”³⁵

California is one of only eight states that serves at-risk infants and toddlers.³⁶ To qualify for Early Start³⁷ (ES) under a high risk for developmental disability, the infant or toddler must “ha[ve] a combination of two or more [risk] factors that require . . . early intervention services.”³⁸ “Cultural or economic factors” are not considered in determining a developmental delay.³⁹ The factors examined are:

30. *Id.*

31. 20 U.S.C. § 1432(5)(A)(i) (2000). Cognitive development includes thinking, remembering, learning, and problem solving. It is the “acquisition of learning through ongoing interactions with the environment.” CAL. CODE REGS. tit. 17, § 5200(b)(6) (1999). Physical development includes gross and fine motor skills such as rolling over, sitting up, crawling, reaching for objects, grabbing toys, and finger foods. CAL. CODE REGS. tit. 17, §§ 52000(b)(16), (b)(18) (1999). Communication includes receptive and expressive skills— hearing, understanding spoken words, cooing, babbling, talking, engaging in turn taking with speech—adult says something and then child responds and waits for adult to say something. CAL. CODE REGS. tit. 17, § 5200(b)(8) (1999). Social and emotional development involves “the acquisition of capacities for human relationships, emotional expression, communication and learning” and the “intensity and affect and modulating one’s response to the environment.” CAL. CODE REGS. tit. 17, § 5200(b)(47) (1999). It involves positive interaction and maintaining personal relationships. *Id.* It is a foundation for future self-esteem and coping skills. *Id.* Adaptive development is how the child takes care of her needs for example, helping hold the bottle, feeding finger foods, how the child responds to changes in the environment and other problems—does the child cry and resist change and not calm down or does child problem solve and find another way to do things or incorporate the change. Other examples of adaptive development include: how the child responds to her changes in her environment; self comforting skills such as thumb sucking, twirling hair, sucking on hand, rocking, etc. CAL. CODE REGS. tit. 17, § 5200(b)(2) (1999).

32. 20 U.S.C. § 1432(5)(A)(ii) (2000).

33. *Id.* § 1432(5)(B).

34. *Id.* § 1432(1).

35. 34 C.F.R. § 303.17 n.2 (1999) (emphasis added).

36. DEP’T OF EDUC. REPORT, *supra* note 27, at II-3.

37. Early Start is California’s Early Intervention program serving infants and toddlers, birth to three with disabilities, established risk for disabilities or at high-risk for developmental disabilities.

38. CAL. CODE REGS., tit. 17, § 52022(c)(1) (1999) (emphasis added).

39. *Id.* tit. 17, § 52022(d)(2).

- (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 gestational age: below the third percentile on the National Center for Health Statistics growth chart;
- (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 nennefebrile seizures during 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 75% 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;
- (o) Parent who has a developmental disability as defined in Welfare and Institutions Code Section 4512(a).⁴⁰

If a child has a combination of two or more of these risk factors, then the infant or toddler has a high risk for developmental delay and qualifies for ES services. The regional center⁴¹ assigns the family a service coordinator. The service coordinator, the family, and an interdisciplinary team assess the child's strengths and needs, and write an Individualized Family Service Plan (IFSP). The required education intervention services for the child and family are recorded in the IFSP.

The Legislature intended services to high-risk infants and toddlers to have "equal priority with all other basic regional center services."⁴² The re-

40. *Id.* tit. 17, § 52022(c)(1)(A)-(N), (c)(2) (emphasis added). For definitions of the various factors, see CAL. CODE REGS. tit. 17, § 5200(b) (1999).

41. Regional Center refers to the Regional Center for the Developmentally Disabled. There are two systems that interact to provide EI services, the Regional Center and the Local Education Areas (LEAs). The Regional Centers are exclusively responsible for providing services to infants and toddlers at high-risk for developmental disabilities. CAL. CODE REGS. tit. 17, § 52109(a)(3) (1999). Because the focus of this Comment is on educational services available for high-risk children, only the responsibilities of the regional center are discussed. The LEAs do not serve infants and toddlers solely because of high-risk of developmental delays. CAL. CODE REGS. tit. 17, § 52110 (1999).

42. CAL. WELF. & INST. CODE § 4644(a) (West 1998).

gional center must “provide, arrange, or purchase” the services listed on the infant or toddler’s IFSP.⁴³ Before paying for or providing the services, the regional center refers to other public agencies capable of providing services or payment. Public agencies include Children’s Services and Medi-Cal.⁴⁴ The regional center also makes referrals to private agencies like insurance companies.⁴⁵ If there are no alternate sources of funding or service providers, then it is the responsibility of the regional center, as payor of last resort, to purchase and/or provide the services.⁴⁶ If alternate sources of funding exist but the infant, toddler or the family is not eligible to receive assistance from the other agency or if the alternate program does not have the requisite amount of funding, the regional center must provide the services listed on the IFSP.⁴⁷ EI services are to “begin as soon as possible”⁴⁸ and not be delayed by the review of alternate funding and placement.⁴⁹ Additionally, “regional centers shall not place an infant or toddler on a waiting list for early intervention services required by the IFSP.”⁵⁰

The regional center must provide EI services in the infant or toddler’s natural environment. “Natural environment means settings that are natural or normal for the child’s age peers who have no disabilities.”⁵¹ The natural environment includes “the home and community settings.”⁵² Community settings include center-based programs with non-disabled peers.⁵³

B. Early Intervention and the Foster Care System

Parents have an important role in EI. Indeed, “[a] fundamental premise of federal and state special education law is that each child’s parent will be an active participant throughout the special education decision-making process.”⁵⁴ The parent is “recogniz[ed] as the infant’s primary teacher.”⁵⁵ The family is viewed as “the constant in the child’s life,” in contrast to the EI personnel and the system itself, which fluctuates.⁵⁶ Parental consent is re-

43. CAL. CODE REGS. tit., 17, § 52109(a) (1999).

44. *Id.* § 52109(b).

45. *Id.*

46. *Id.* §§ 52108(b)(1), 52109 (b).

47. *Id.* § 52108(b)(1).

48. *Id.* §§ 52109(b), 52106(d).

49. *Id.* § 52109(b).

50. *Id.* § 52106(c).

51. 34 C.F.R. § 303.18 (1999).

52. CAL. CODE REGS. tit. 17, § 5200(b)(35) (1999).

53. Letter to Woolsey, 34 INDIVIDUALS WITH DISABILITIES EDUC. LAW REP. 36 (Aug. 6, 1999).

54. Cynthia Godsoe, *Caught Between Two Systems: How Exceptional Children in Out of Home Care are Denied Equality of Education*, 19 YALE L. & POL’Y REV. 81, 137 (2000) (quoting LOREN WARBOYS ET AL., CAL. JUV. CT. SPECIAL EDUC. MANUAL 42, 135 (1994)).

55. CAL EDUC. CODE § 56425.5 (West 1989).

56. CAL. GOV’T CODE § 95001(a)(3) (West Supp. 2002).

quired “before the initial evaluation and assessment” and “before early intervention services are initiated.”⁵⁷

When the regional center receives a referral from a non-family member (including foster parents) the agency, “make[s] every effort to contact the family or legally authorized representative”⁵⁸ for permission to complete the referral and provide services. When the infant or toddler is in foster care, an ES contact person notifies Children’s Protective Services about the referral and requests information about the location of the biological parents and who holds the educational rights of the child.⁵⁹

A parent has a fundamental right to “direct the upbringing and education of children under their control.”⁶⁰ In California, the court must separately limit educational rights of the parents, and the “limitations shall not exceed those necessary to protect the child;”⁶¹ “removal from the home for abuse or neglect is not sufficient.”⁶² Usually, the biological parent “maintains educational rights for [her] child.”⁶³ Accordingly, ES must locate the parent and obtain her consent.⁶⁴ If ES is successful and the parent consents, then the child can participate in ES.⁶⁵ The parent is actively involved at each stage of the “assessment, planning, and IFSP process for their child.”⁶⁶ If the parent denies consent, then services may not be provided. If the court terminated educational rights, then ES may appoint a surrogate⁶⁷ and there is no need to obtain parental consent. Alternatively, the parent has the option to designate her education rights to another adult.⁶⁸ If she does and the designee consents, then ES services can be provided.⁶⁹

If after at least two weeks and three attempts to communicate with the parent, the parent is either “unwilling or unresponsive” or her “whereabouts [are] unknown,”⁷⁰ the ES worker sends a letter to the Children’s Services caseworker documenting the attempts to contact the biological parent and

57. CAL. CODE REGS. tit. 17, § 52162(a) (1999).

58. Local Interagency Agreement Between San Diego County Regional Center for the Developmentally Disabled & San Diego County Special Education Local Plan Areas & Superintendent of Schools San Diego County Office of Education For California Early Start Program 8 (Aug. 2000) (unpublished agreement) (on file with *California Western Law Review*) [hereinafter Interagency Agreement].

59. *Id.* at app. H.

60. *Pierce v. Society of Sisters*, 268 U.S. 510, 534-535 (1925); *see also Meyer v. Nebraska*, 262 U.S. 390, 400 (1923).

61. CAL. WELF. & INST. CODE § 361(a) (West 1998) (emphasis added); *see CAL. GOV’T CODE* § 7579.5(a) (West 1995).

62. *Godsoe*, *supra* note 53, at 108.

63. Interagency Agreement, *supra* note 58, at 17.

64. *Id.* app. H.

65. *Id.*

66. *Id.* at 17.

67. CAL. CODE REGS., tit. 17, § 52175(a)(2) (1999).

68. Interagency Agreement, *supra* note 57, app. H.

69. *Id.*

70. *Id.*

requests information about the biological parent.⁷¹ If after “reasonable efforts”⁷² ES is still unable to locate the parent, then a third letter is sent to Children’s Protective Services detailing the attempts of communication.⁷³ Now, ES can appoint an educational surrogate regardless of the status of the educational rights of the parent.⁷⁴ The surrogate parent stands in the shoes of the biological parent, having all the educational rights the biological parent would have in the same situation.⁷⁵ The child can participate in ES because the educational surrogate can authorize the child’s participation in ES and sign the IFSP.⁷⁶ ES can appoint the foster parent as the surrogate parent so long as the foster parent does not have a conflict of interest that interferes with his or her ability to “advocate for all of the services required” for a FAPE.⁷⁷

C. Dependency System

California case law explains:

[t]he dependency statutes embody three primary goals for children adjudged dependents of the juvenile court: (1) to protect the child; (2) to preserve the family and safeguard the parents’ fundamental right to raise their child, as long as these can be accomplished with safety to the child; and (3) to provide a stable, permanent home for the child in a timely manner.⁷⁸

The presumption is that it is in the best interests of the child to remain with the biological parents until the state proves, by clear and convincing evidence,⁷⁹ that the child is in substantial danger and there are no other reasonable means to keep the child safe other than removal from the home.⁸⁰ This requires a determination whether “reasonable efforts were made to prevent or eliminate” removal of the child.⁸¹

71. *Id.*

72. CAL. GOV’T CODE § 7579.5 (West 1995).

73. Interagency Agreement, *supra* note 57, app. H.

74. *Id.*

75. CAL. GOV’T CODE § 7579.5(d) (West 1995).

76. Interagency Agreement, *supra* note 57, at 17; CAL. CODE REGS. tit. 17, § 52175(c) (1999).

77. CAL. GOV’T CODE § 7579.5(f) (West 1995).

78. *In re Santos Y.*, 112 Cal. Rptr. 2d. 692, 727 (Cal. Ct. App. 2001) (citations omitted).

79. CAL. WELF. & INST. CODE § 361(c) (West 1998) (“No child shall be taken from the physical custody of his or her parents or guardian . . . unless the juvenile court finds clear and convincing evidence. . .”).

80. CAL. WELF. & INST. CODE § 361(c) (West 1998). If there is a “substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor;” *Id.* § 361(c)(1). Or the minor has been “sexually abused.” *Id.* § 361(c)(4). And, “there are no reasonable means by which the minor can be protected from further sexual abuse . . . without removing the minor from the minor’s parents’ or guardians’ physical custody.” *Id.* § 361(c)(1).

81. *See* CAL. WELF. & INST. CODE § 361(b) (West 1998) (defining when reunification

Because of the strong preference for keeping families together, when a child is removed from the home because of abuse or neglect, “the juvenile court . . . orders reunification services.”⁸² The social worker must provide “child welfare services to the child, the child’s mother, and the statutorily presumed father.”⁸³ At the same time, there are limits on the length of time for reunification services for the parent because California recognizes a fundamental right for children to “have a placement that is stable [and] permanent.”⁸⁴ When a child is under three at the time of removal, there is an initial six-month period for reunification services.⁸⁵ If the parents do not regularly (1) “participate in any court-ordered treatment programs” or (2) do not accept and participate in “services provided as part of the child welfare services case plan,” then the court may terminate reunification services.⁸⁶ If the parent is compliant and the “permanent plan” is that the infant or toddler will be returned to the biological parents, then the court can extend reunification services for an additional year.⁸⁷ The court will extend the time “only if it finds that there is a substantial probability that the child will be returned to the . . . parent or guardian within the extended time period or that reasonable services have not been provided to the parent.”⁸⁸ “The court [must] specify the factual basis” supporting its conclusion.⁸⁹

While the parent receives reunification services, the child remains in foster care. The goal behind the shortened period of reunification services is to minimize the “foster care drift”—i.e., the amount of time the child spends in foster care before the court orders a permanent placement either returning the child to the biological family or terminating parental rights and placing the child for adoption.

III. THE DIFFICULTIES WITH EARLY INTERVENTION AND THE CHILD-WELFARE SYSTEM

Neither the EI system nor the child welfare system, nor the interaction of the two systems, adequately provides for the developmental needs of children birth to three removed from their home because of abuse or neglect.

services do not need to be provided to the parent).

82. CAL. WELF. & INST. CODE § 361.5(a) (West Supp. 2002).

83. *Id.* Interestingly, the statute requires that the social worker provide services to the child, but it is silent on what services are available to the child. *See* discussion *infra* Part III.

84. *In re Santos Y.*, 112 Cal. Rptr. 2d. at 725 (citing *In re Jasmon O.*, 878 P.2d 1297, 1307 (Cal. 1994)).

85. CAL. WELF. & INST. CODE § 361.5(a)(2) (West Supp. 2002).

86. *Id.* § 361.5(a)(3).

87. *Id.* The exact language of the statute says: “court ordered services may be extended up to a maximum time period not to exceed 18 months after the date the child was originally removed from physical custody of his or her parent or guardian.” *Id.* For children birth to three, the parents already had the initial six-month period which leaves a maximum time left of one year.

88. CAL. WELF. & INST. CODE § 361.5(a)(3) (West Supp. 2002).

89. *Id.*

Removal from the home because of abuse or neglect is not a high-risk factor; therefore, the infants and toddlers do not qualify for EI services. Parents retain educational rights and can delay or deny essential services to the child. The child-welfare system focuses on the child's physical needs and safety.⁹⁰ Reunification services focus on "fixing" the parents" and do not focus on the developmental harm the abuse or neglect caused to the infant or toddler.⁹¹ Eighteen months is an extremely long time to a child under three and developmental damage can occur and be exacerbated if appropriate interventions are not provided. Therefore, EI's focus on parental consent is inappropriate once a child enters the dependency system because it takes precious time from delivery of services.

A. Difficulties with Early Intervention System

1. Abused and Neglected Children are Ineligible

Currently, infants and toddlers removed from the home because of abuse or neglect do not qualify or receive EI services under high-risk for developmental delay because "a combination of two or more risk factors must exist."⁹² The sole existence of a "biomedical insult" that is the direct result of abuse or neglect is not sufficient. California's at-risk definition focuses solely on biological risk factors even though the federal guidelines include environmental risk.⁹³ California does not consider cultural or economic factors in determining risk for developmental delays.⁹⁴ Excluding removal from the home because of abuse or neglect (according to the at-risk definition), ignores the developmental research and data regarding the impact of abuse and neglect on neurological development, and such an exclusion frustrates the intent of the EI legislation to minimize the potential for developmental delays.

2. Delay in Essential Services

Normally, the presumption is that parents act in the best interest of their child. This is true until clear and convincing evidence shows otherwise. Removal of the child from the home because of abuse or neglect is proof that the parent no longer acts in the best interest of the child. Yet, in California, educational rights are determined in a separate hearing and limited only to the extent necessary to protect the child. The result is that in almost all cases parents retain educational rights. Parental consent is required at all stages of the EI process. The process of locating the parent, gaining her consent, or making reasonable efforts to locate the parent (and possibly appointing a sur-

90. Weinstein & Weinstein, *supra* note 11, at 563.

91. *Id.* at 563-64.

92. CAL. CODE REGS. tit. 17, § 52022(c)(1) (1999).

93. 34 C.F.R. §303.17 n.2 (1999).

94. CAL. CODE REGS. tit. 17, § 52022(d)(2) (1999).

rogate) delays the delivery of EI services to the infant or toddler. There is the possibility that the biological parent will refuse to consent to the referral or EI services and the child will not receive the services. The parent remains in the position where she continues to harm the child by denying educational support, which minimizes the negative effects of abuse and neglect on the brain and strengthens learning foundations. When a child is in foster care, the biological family is no longer constant in the child's life; therefore, involving the family at all stages of the EI process is no longer appropriate.

B. Unfocused Child Welfare System

The court-ordered reunification services do not focus on providing the child adequate developmental supports. The juvenile court has power to order the social worker to provide services to the child.⁹⁵ In contrast to the detail provided about the rights of the parents, the statute does not delineate the services the child is eligible to receive and does not address any consequences if the social worker fails to provide those services. Typically, the focus for children is meeting their physical needs and providing a safe environment.⁹⁶ This is an important function, but solely removing the child from her immediate harmful environment is not a sufficient intervention because it ignores the neurological injury the abuse or neglect caused. The statute provides for a developmental assessment when there is a hearing to terminate parental rights.⁹⁷ The court must order developmental assessments and services for the child.

IV. BRAIN DEVELOPMENT

The early years are the most important for brain growth and development. At birth the brain contains over 100 billion neurons⁹⁸ (nerve cells), but most connections between the neurons (synapses) are not developed.⁹⁹ By age three, "the human brain develops to ninety percent of adult size" and establishes "the majority of systems and structures . . . responsible for all future emotional, behavioral, social, and physiological functioning. . . ."¹⁰⁰

The development of the brain is "use-dependent."¹⁰¹ Early "experience[s] . . . provide . . . the organizing framework" for the brain.¹⁰²

95. CAL. WELF. & INST. CODE § 361.5(a) (1999).

96. Weinstein & Weinstein, *supra* note 11, at 563.

97. CAL. WELF. & INST. CODE § 361.5(g)(3) (West 1998).

98. *Curiosity, Pleasure and Play*, *supra* note 6, at 9.

99. *Id.*

100. Bruce D. Perry, *Bonding & Attachment in Maltreated Children: Consequences of Emotional Neglect in Childhood: Part One*, 19(1) CAPITOL COMMENTS 5, 6 (Jan./Feb. 2000) (Wis. Council on Children and Families, Wisconsin) available at, http://www.child-trauma.org/ctamaterials/AttCar4_02.pdf (2001) [hereinafter *Bonding & Attachment: Part One*].

101. *Curiosity, Pleasure and Play*, *supra* note 6, at 10.

“[E]xperience[s] activate . . . certain pathways in the brain, strengthening existing connections and creating new ones.”¹⁰³ The more an area of the brain is stimulated, the stronger the synaptic connection.¹⁰⁴ These strong connections “hard-wire” the brain and form the “basis for learning and memory.”¹⁰⁵ At the same time, the brain “prunes” synapses not stimulated by early experiences. Pruning “allows the brain to keep the connections that have a purpose, while eliminating [connections] that aren’t doing anything.”¹⁰⁶

“Plasticity” is the process of the brain “creat[ing], strengthen[ing], and discard[ing]” neural connections in response to changes in the environment and experiences.¹⁰⁷ The brain is “most plastic during [very] early childhood.”¹⁰⁸ At this time, it is the most receptive and sensitive to environmental experiences. After age three, the brain is less plastic, and the rate of pruning increases.¹⁰⁹ The brain becomes less able to “rewire” or form new connections in response to the environment, and there are fewer neurons and synaptic connections available for learning.

The brain develops in a sequential manner¹¹⁰ from the least to most complex regions and functions.¹¹¹ At birth, the synapses for the most basic functions such as “heart rate, breathing, eating, and sleeping” are present.¹¹² The healthy development of different regions of the brain is “dependent upon the presence, pattern, frequency and timing [of] experiences.”¹¹³ “Healthy development of one region . . . is dependent upon the healthy development [and organization] of lower brain regions that take place earlier in the process.”¹¹⁴ For example, the typical sequence for gross motor development is: stabilizing the head, holding it up for brief periods while on the stomach, rolling over, sitting with support, sitting without support, pushing to all fours and rocking, crawling, pulling up, walking with support, and walking without support. “The consequence of sequential development is that as different regions are organizing, they require specific kinds of experience targeting the region’s specific function.”¹¹⁵

“One of the most fundamental tasks an infant undertakes is determining whether and how he can get his needs met in the world in which he lives.”¹¹⁶

102. *The Impact of Childhood Abuse and Neglect*, *supra* note 19, at 5.

103. Weinstein & Weinstein, *supra* note 11, at 593 (citation omitted).

104. *The Impact of Childhood Abuse and Neglect*, *supra* note 19, at 5.

105. *Id.*; *Understanding the Effects of Maltreatment*, *supra* note 2.

106. Hawley, *supra* note 12, at 3.

107. *Understanding the Effects of Maltreatment*, *supra* note 2.

108. *The Impact of Childhood Abuse and Neglect*, *supra* note 19, at 6.

109. *Understanding the Effects of Maltreatment*, *supra* note 2.

110. *The Impact of Childhood Abuse and Neglect*, *supra* note 19, at 5.

111. *Neuroarcheology of Childhood Maltreatment*, *supra* note 5, at 16.

112. *Understanding the Effects of Maltreatment*, *supra* note 2.

113. *Curiosity, Pleasure and Play*, *supra* note 6, at 10.

114. *Id.* at 9.

115. *The Impact of Childhood Abuse and Neglect*, *supra* note 19, at 5.

116. Hawley, *supra* note 12, at 6.

“Predictable, patterned and consistent” interactions in stable environments create consistent and organized stimulation in the brain, allowing it to process information about the outside world in an ordered way.¹¹⁷ The child learns if she cries, her cries will be answered, and she will receive comfort; if she is hungry, she will be fed; if she needs her diaper changed, it will be changed; if she smiles and coos, people will interact and respond to her. This leads to the child feeling safe.¹¹⁸ “The more comfortable a child feels with the world, the more likely she will explore, discover, master and learn.”¹¹⁹ “Optimal child development occurs when a spectrum of needs are consistently met over an extended period.”¹²⁰ “All learning—emotional, social, motor, cognitive—is accelerated and facilitated by positive, consistent and patterned experiences.”¹²¹ Positive experiences create positive effects in brain development; the neural pathways are stimulated and strengthened thereby creating a solid basis for further development and learning.

Sadly, “for millions of abused and neglected children, the nature of their experiences adversely influences the development of their brains.”¹²² The child interacts very differently with his world. The child’s cries for comfort are “usually ignored or met with harsh words and rough handling.”¹²³ Similarly, his physical needs and feedings are handled in a cursory and inconsistent manner. The child is unable to successfully engage adults around him; he is either ignored or gets negative attention. The child receives inconsistent, unpredictable, and unnurturing responses; this “chaos . . . will develop neural systems and functional capabilities that reflect th[e] disorganization.”¹²⁴ The infant or toddler is unsure his basic needs will be met. The infant, therefore, “focus[es] his energies on ensuring that his needs are met”¹²⁵—on survival. The caregiver, the person the baby depends on to meet his needs, violates the baby’s trust. The young child does not know what the response will be to his behavior, and he learns not to waste energy trying to engender a response. The infant or toddler is in an almost constant state of fear and alertness. He therefore will focus his brain’s resources on “survival and responding to threats in [his] environment.”¹²⁶

117. *Neuroarcheology of Childhood Maltreatment*, *supra* note 5, at 27; *Curiosity, Pleasure and Play*, *supra* note 6, at 9.

118. As Dr. Bruce Perry aptly noted, “[T]o a child, feeling safe has little to do with outlet plugs and childproof cabinets. A child’s sense of safety stems from calm and *predictable* world—one in which she knows what will happen next.” *Curiosity, Pleasure and Play*, *supra* note 6, at 12 (emphasis in original).

119. *Curiosity, Pleasure and Play*, *supra* note 6, at 9.

120. American Academy of Pediatrics, *supra* note 7, at 1146.

121. *Curiosity, Pleasure and Play*, *supra* note 6, at 9.

122. *The Impact of Childhood Abuse and Neglect*, *supra* note 19, at 6.

123. Hawley, *supra* note 12, at 5 (citations omitted).

124. *Neuroarcheology of Childhood Maltreatment*, *supra* note 5, at 27.

125. Hawley, *supra* note 12, at 5 (citations omitted).

126. *Understanding the Effects of Maltreatment*, *supra* note 2.

The effects of “chronic stress . . . [on an infant may be] apathy, poor feeding, withdrawal, and failure to thrive.”¹²⁷ The brain’s response to threats in the environment alters the form of the normal “fight or flight” reflexes. “[T]he typical ‘fight’ response to stress may change from crying (because crying did not elicit a response) to temper tantrums, aggressive behaviors, or inattention and withdrawal.”¹²⁸ “The child, rather than running away (the ‘flight’ response), may learn to become psychologically disengaged, leading to detachment, apathy, and excessive daydreaming. Some abused and neglected children learn to react to alarm or stresses in their environment reflexively with immediate cessation of motor activity [and mental activity]¹²⁹ (freeze response).”¹³⁰

Chronic activation of the fear-related regions of the brain results in: “hypervigilance, increased muscle tone, a focus on threat-related cues . . . , anxiety, and behavioral impulsivity;”¹³¹ moreover, disruptions in “attention, impulse control, sleep, and fine motor control” are typical.¹³² When the fear-related regions are over-stimulated, “other regions of the brain, such as those involved in complex thought, *cannot* also be activated and therefore [are] not ‘available’ to the child for learning.”¹³³ The synapses in the higher regions are used less frequently and are therefore less developed. If the regions remain inactive, there is a risk the brain will “over-prun[e]” the connections “leav[ing] the child struggling to do [activities. . . that] would have come more naturally otherwise.”¹³⁴ The child is at a disadvantage for learning. The brain is unable to form the connections necessary for the development of new skills.

“Children who suffer the chronic stress of neglect—e.g., remaining hungry, cold, scared, or in pain—will also focus their brain’s resources on survival.”¹³⁵ “Neglect has very profound and long-lasting consequences on all aspects of child development—poor attachment formation, understimulation, development delay, poor physical development, and antisocial behavior.”¹³⁶

As Dr. Bruce Perry¹³⁷ aptly described, “[n]eglect is the absence of critical organizing experiences at key times during development.”¹³⁸ “For chil-

127. American Academy of Pediatrics, *supra* note 7, at 1146.

128. American Academy of Pediatrics, *supra* note 7, at 1147 (citing R.A. Spitz, *Anaclitic Depression*, in *THE PSYCHOANALYTIC STUDY OF THE CHILD* 313-42 (R.S. Eissler ed., 1946)).

129. American Academy of Pediatrics, *supra* note 7, at 1147. See *Understanding the Effects of Maltreatment*, *supra* note 2. “Children freeze with threat—both physically and cognitively.” *Id.*

130. American Academy of Pediatrics, *supra* note 7, at 1147.

131. *The Impact of Childhood Abuse and Neglect*, *supra* note 19, at 6.

132. *Understanding the Effects of Maltreatment*, *supra* note 2 (citations omitted).

133. *Id.* (emphasis added).

134. Hawley, *supra* note 12, at 3.

135. *Understanding the Effects of Maltreatment*, *supra* note 2.

136. American Academy of Pediatrics, *supra* note 7, at 1147 (citations omitted).

137. Dr. Bruce D. Perry, M.D., PhD, is an expert on the impact of trauma on neurologi-

dren to master developmental tasks . . . they need opportunities, encouragement, and acknowledgment from their caregivers."¹³⁹ Because the brain is a "use-it or lose it" system, lack of environmental and social interaction does not give the brain enough (or the right kinds of) stimulation to develop productive neural pathways; there is a serious risk that they "may wither and die."¹⁴⁰ Under these conditions, "the children may not [be able to] achieve the usual developmental milestones."¹⁴¹ Research shows that children who are not "touch[ed], stimulat[ed] or nurtur[ed] can literally lose the capacity to form meaningful relationships for the rest of their lives" because the proper areas of the brain did not receive proper stimulation and organization.¹⁴² Many young neglected children have speech and language delays because, without direct interaction with other human beings¹⁴³ providing them with "intense verbal interaction"¹⁴⁴ at the appropriate time, optimal language skills do not develop. The effect of the abuse and neglect on brain development is so profound that "some genetically normal children . . . become mentally retarded or . . . develop serious emotional difficulties."¹⁴⁵

Suffering abuse and neglect as a very young child negatively alters the development of the brain. The brain focuses its energy on survival, and other areas of the brain are not available for learning. Under-stimulation or no stimulation of brain regions results in weak or pruned areas. An inadequate foundation exists for future learning. That said, the brain is the "most plastic" and able to change in response to the environment during early childhood. Providing the child with "consistent, predictable, and nurturing experiences"¹⁴⁶ can "reactivate" the altered portions of the brain.¹⁴⁷

V. RECOMMENDATIONS

A. Change the Definition of High-Risk for Developmental Delay

Brain development occurs most rapidly "during the first three years of life."¹⁴⁸ Child abuse and neglect during infancy and early childhood alters

cal development, including child abuse and neglect.

138. *Neuroarcheology of Childhood Maltreatment*, *supra* note 5, at 24.

139. *Understanding the Effects of Maltreatment*, *supra* note 2.

140. *Id.*

141. *Id.*

142. *Bonding & Attachment: Part One*, *supra* note 100, at 6-7. "In general, the severity of problems is related to how early in life, how prolonged and how severe the emotional neglect has been." *Id.* at 7.

143. Hawley, *supra* note 12, at 4.

144. *Understanding the Effects of Maltreatment*, *supra* note 2.

145. Hawley, *supra* note 12, at 2.

146. *Neuroarcheology of Childhood Maltreatment*, *supra* note 5, at 27; *Curiosity, Pleasure and Play*, *supra* note 6, at 9.

147. *Understanding the Effects of Maltreatment*, *supra* note 2.

148. *Bonding & Attachment: Part One*, *supra* note 100, at 6.

the neurological structure of the brain.¹⁴⁹ The negative impacts of early abuse and neglect have lifelong effects and “can manifest . . . at any age in a variety of ways”¹⁵⁰ including learning disabilities,¹⁵¹ “depression, self-destructive behavior, eating disorders, attention deficit disorders, drug and alcohol problems, sexual promiscuity,”¹⁵² “aggression, impulsiveness, delinquency [and] hyperactivity.”¹⁵³ EI is preventative; it “minimize[s] the potential for developmental delay[s].”¹⁵⁴ EI is cost effective; it “reduce[s] education costs to our society” by decreasing “the need for special education and related services” when the child starts school.¹⁵⁵ It is a better practice for society to prevent these problems while the brain is capable of changing¹⁵⁶ rather than wait until the problems manifest and no meaningful change can occur. The law values preventative services, and they are on equal footing with other services the regional center provides.¹⁵⁷ Therefore, the law must change and include removal from the home because of abuse or neglect as an independently sufficient factor for high-risk for developmental delays and qualify the infant or toddler for EI services with the regional center.¹⁵⁸

B. Increase the Role of the Juvenile Court in Providing Developmental Services

1. Limit Rights of Parents to Consent to EI Services for Their Child

Even though parents have a fundamental interest and right in controlling the upbringing and education of their child,¹⁵⁹ the state can limit this right so long as there is a compelling purpose and the statute is tailored for that purpose.¹⁶⁰ The state can limit parents’ educational rights but only to the extent necessary to protect the child, and the limit must be specifically addressed in that order.¹⁶¹ While parents hold the statutory right to reunification, complete

149. Hawley, *supra* note 12, at 10.

150. Teicher, *supra* note 15, at 70.

151. Hawley, *supra* note 12, at 7.

152. *Id.* at 10.

153. Teicher, *supra* note 15, at 70.

154. 20 U.S.C. § 1431(a)(1) (2000).

155. 20 U.S.C. § 1431(a)(2) (2000).

156. Hawley, *supra* note 12, at 6. “[T]he costs . . . of trying to repair, remediate, or heal these children is far greater than the costs of preventing these problems by promoting healthy development of the brain during the first few years of life.” *Id.*

157. CAL. WELF. & INST. CODE § 4644(a) (West 1995).

158. A child removed from the home for abuse or neglect can still qualify for EI services by having a developmental delay or established risk condition. All other children removed from the home because of abuse or neglect should be entitled to receive EI services because of the high risk for developmental delays.

159. *Pierce v. Society of Sisters*, 268 U.S. 510, 534-35 (1925); *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923).

160. *Sherbert v. Verner*, 374 U.S. 398 (1968).

161. CAL. GOV’T CODE § 7579.5(a) (West 1995); CAL. WELF. & INST. CODE § 361 (West

termination of educational rights is not appropriate; it makes sense to involve the parent as much as possible in the daily activities and decisions for the child. Parental involvement and awareness, however, does not require the ability to consent to the services.

The statutory framework adequately protects parental rights. The state has a strong interest in reducing the social and educational costs to society, minimizing the potential for developmental delay, protecting the welfare of the child, and providing appropriate educational services to dependents. The child has a strong interest in receiving appropriate developmental services that minimize the negative results from abuse and neglect and gives the child a chance to learn and succeed in school. The child has already suffered abuse or neglect at the hands of his parent: the parent should not have the right to continue to harm the child by denying consent or delaying much needed developmental services necessary to minimize the negative impact of abuse and neglect. The child should be given a fair chance to succeed in life.

The court should limit the parents' ability to consent to the EI referral and services. The court, however, should leave intact the parents' right to participate in the educational activities (as long as there is no risk of harm to the child) and receive training about child development. This reduces the bureaucracy and delay for a child in foster care receiving early intervention services while both the child and parent receive the appropriate services.

2. Order the Child to Receive a Developmental Screening and Appropriate Educational Services

In San Diego County, the Juvenile Court and Children's Services have a joint policy statement "to ensure all children who are dependents receive appropriate educational services."¹⁶² The statement provides that at the initial assessment, the social worker will determine if "a child has or qualifies for" an IFSP.¹⁶³ This is a very good idea; however, it is inadequate. Social workers are not developmental experts capable of performing an evaluation and assessment to determine eligibility for early intervention services. For the child to benefit, it is essential he enter the EI system as soon as possible. The easiest and most efficient time to refer a high-risk child is at the time of entry into the dependency system.

The juvenile court has the power to order developmental services for the child. It should become standard practice to order a developmental assessment and appropriate EI services. This will ensure that the developmental needs of even the youngest child are viewed as a basic form of education.

1998).

162. THE EDUCATION COMMITTEE OF THE DEPENDENCY POLICY GROUP, Educ. Comm. Report, *THE DEPENDENCY COURT RECOVERY PROJECT* app. B (Nov. 2001) (unpublished Education Committee Report for the Dependency Policy Group located in San Diego County) (on file with *California Western Law Review*).

163. *Id.*

Ideally, the referrals would be centrally coordinated by the court and carried out by assigned educational advocates.¹⁶⁴ The referral should contain relevant information including: name and birthday of the child; name of the social worker; name, address, and phone number of biological parents; identity of who holds educational rights; health and medical information including immunizations; and if the child has a current (within the past twelve months) IFSP. This is the most efficient way to ensure developmental services for the child.¹⁶⁵ Additionally, there is no guarantee the foster parent would know about the EI services or be able to maneuver the system without support. The court must protect the child's right to receive appropriate developmental services. The juvenile court must fulfill its commitment to the education of dependent children. The court should appoint an educational advocate for the infant or toddler and provide the necessary referral information. In so doing, the court would not be overly burdened, and the benefit to the smallest and most helpless dependents would last a lifetime.

3. Assign Foster Children Education Advocates

Abused and neglected infants and toddlers do not have an advocate to represent their educational needs to the court, children's services, or EI providers. Developmental intervention is essential to these children having a "fair chance to succeed in life."¹⁶⁶ Indeed, that is the whole point of the "no child left behind campaign"—the importance of early learning and programs. Studies show that positive experiences when the brain is still "plastic" can minimize the negative effects of abuse and neglect.¹⁶⁷ This reduces the need for future special education, mental health services, and even involvement in the juvenile delinquency system.

When an infant or toddler enters the dependency system, the judge should assign an education advocate. She would be the hub connecting all of the players involved in the child's educational needs—the court, the foster parents, the children's services social worker, Early Start, and the biological parents. She would have a duty to the child's developmental needs and would report to the court.

She would make the initial referral to ES for an assessment. She would serve as the initial service coordinator and contact person for the child's developmental needs. She would make the referral for developmental screenings. She would "facilitate . . . and coordinate . . . the evaluation process" and would be responsible for scheduling and sending written notice of the

164. See discussion of educational advocates *infra* Part V.B.3.

165. Foster parents typically must wait up to thirty days before receiving education and health information from Children's Services. See CAL. WELF. & INST. CODE § 16010(c) (West 2001).

166. Bush, *supra* note 24.

167. *The Impact of Childhood Abuse and Neglect*, *supra* note 19, at 6.

IFSP meeting to all parties¹⁶⁸ including the biological parents. At the IFSP meeting, the regional center appoints the service coordinator. The service coordinator does not have to be the education advocate; however, she is to receive updates on the child's developmental progress and be aware of the ES services that are provided. The education advocate would be responsible for providing the court and children's services with information.

The educational advocate would also coordinate education for the biological parents and the foster parents. She would educate them on both the importance of early brain development and why ES services are essential for the child. She would also be a resource for the foster family if they run into difficulties or have any questions about the system. She is the "heavy hitter" so to speak and should encourage the foster family to work with the regional center.

The education advocate would arrange parental involvement and participation in the IFSP and the EI services. She would make sure they are informed and active participants in the education of their child. She would arrange for the parents (so long as it is safe for the child) to attend ES classes with the child. This way the parents would observe the ES workers and would learn how to interact with their child in a healthy way (e.g., learning the age appropriate capabilities of the child). This is an invaluable opportunity for the parent and child to bond and form attachments. The American Pediatrics Society recommends that for the visits to be beneficial, "they should be frequent and long enough to enhance the parent-child relationship."¹⁶⁹ The parent would participate in the activities at the center several times a week. This would allow the parent to provide consistent, patterned, positive responses to her child, and the child would learn to trust his parent. This forms the foundation for lifelong learning and minimizes (and mends) neurological harm.

If the child has a change in foster care placement, it would be the duty of the educational advocate to ensure no lapse in educational services occurs. She would provide the new foster parents with a copy of the IFSP which explains the EI process. She would also ensure that all of the educational players are aware of the change in placement.

C. Have a Stay-Put Provision for the ES Services

Suffering abuse or neglect disrupts the young child's brain organization. Therefore, positive, consistent, patterned experiences are necessary to reorganize the brain. Abused and neglected children "have a heightened need for permanency, security, and emotional constancy and are, therefore, at great risk because of the inconsistencies in their lives and the foster care sys-

168. Interagency Agreement, *supra* note 58, at 13.

169. American Academy of Pediatrics, *supra* note 7, 1148.

tem.”¹⁷⁰ Inconsistencies, such as multiple placements and disruption in normal schedules, harm rather than help the brain development of the young child.¹⁷¹ The American Academy of Pediatrics notes “[s]tability in child care and the school environment is important.”¹⁷² Therefore, it is essential to provide young children in the dependency system with only one school. The child is assigned to one center and remains there regardless of subsequent foster care placements. Providing a stay-put provision minimizes the disruption to the young child. The child learns the routine at the center, and it is constant for him. He has one or two primary staff responsible for his needs. He will not have to adjust to completely new service providers and foster parents. This minimizes the amount of developmental disruption; though the child still undergoes a period of adjustment. EI law values constancy. Usually, it is the parent who is the constant while the EI system and staff fluctuates.¹⁷³ That is why EI presently has the focus on parental involvement. It is the reverse situation, however, when an infant or toddler is in foster care; the EI center and staff are the constant, and the foster parents fluctuate. Therefore, it is essential to provide abused and neglected infants and toddlers much needed constancy and have only one center-based school for the whole time the child is in foster care.

The centers should have both developmentally disabled and non-disabled children.¹⁷⁴ The center can be Early Head Start or private day care. The legislation currently encourages the regional center to form community partnerships and collaborations. Good public sources for partnership and funding include children’s services, the health department, juvenile delinquency prevention, and county mental health agencies. All of the agencies have a preventative interest in providing appropriate developmental services to abused and neglected infants and toddlers.

D. Results/Summary of Recommendations

If the recommendations are implemented, all children from birth to age three removed from the home because of abuse or neglect would be deemed high-risk for developmental delay and would be eligible for EI services. Under the new system, the Juvenile Court would order the referral for the developmental assessment and appoint an educational advocate. The educational advocate would oversee the process and connect all the interested parties. She would have a duty to serve the child’s educational needs and re-

170. *Id.*

171. *Id.* “Multiple moves while in foster care (with the attendant disruption and uncertainty) can be deleterious to the young child’s brain growth, mental development, and psychological adjustment.” *Id.*

172. *Id.*

173. CAL. GOV’T CODE §95001(a)(3) (West Supp. 2002).

174. This is the requirement of the natural environment component of 20 U.S.C. § 1431 (2000).

port to the court. She would provide for parental interaction and participation in the IFSP and at the center where the child receives ES services. The child would receive ES services at only one center for the whole time she is in foster care regardless of the number of different placements she may experience.

VI. CONCLUSION

Infants and toddlers removed from the home because of abuse and neglect suffer not only physical scars but also developmental ones. Abuse and neglect during the formative years negatively “alter[s] the organization of the brain.”¹⁷⁵ If the child receives no intervention, the negative effects can last a lifetime and may include emotional problems, mental health problems, physical problems, learning disabilities, and involvement with the juvenile delinquency system. These problems have a high cost to society. After-the-fact treatment, when the brain has more difficulty rewiring and the lost synapses cannot be brought back, does not make much sense.

It is in the best interest for the future of California to change the eligibility requirements for EI. California should provide all abused and neglected infants and toddlers in the dependency system EI services because the children are at a high risk for developmental delay. A preventative approach that follows “the core principles of brain development”¹⁷⁶ by providing intervention early, while the brain is still plastic and able to rewire, at centers with a stay-put provision provides the positive, patterned, and nurturing responses necessary for healthy development. This early intervention will provide tangible benefits to abused and neglected children and to society. It will reverse the negative impacts of abuse and neglect on these highly victimized yet smallest and most vulnerable members of society.

*Jennifer R. Meiselman Titus**

175. *Neuroarcheology of Childhood Maltreatment*, *supra* note 5, at 24.

176. *The Impact of Childhood Abuse and Neglect*, *supra* note 19, at 6.

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