

## Evaluation and Eligibility

### **Introduction and Intent**

*Early On*<sup>®</sup> Michigan requires the administration of a timely, comprehensive, multidisciplinary evaluation of each infant/toddler, birth to age three, suspected of having a delay or disability. Evaluation is the procedure used by appropriate qualified personnel to determine an infant/toddler's initial and continuing eligibility for *Early On* supports and services.

Service areas may decide to conduct a screening prior to an evaluation. This is optional and it may be integrated into the Individualized Family Service Plan (IFSP) process. To learn more about conducting a screening, please refer to the **Screening (Post-Referral Screening)** section in **The Individualized Family Service Plan (IFSP) Process** chapter of this manual.

An evaluation is used to determine the existence of a developmental delay and to identify the infant/toddler's unique strengths and needs in all areas of development. It must include information on the infant/toddler's level of functioning and the need for early intervention in the following areas:

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

This section includes information regarding:

- [Early On Evaluation](#)
- [Prematurity Adjustment](#)
- [Eligibility Criteria](#)
- [Parent Involvement](#)
- [When a child currently has an IFSP for Part C only and eligibility for MMSE is suspected](#)
- [Determination that a child is not eligible](#)
- [Part C IDEA 2004 Infants and Toddlers with Disabilities \(IDEA\) Federal Statute](#)
- [Part C Federal Regulations for IDEA 2004](#)
- [Early On Michigan Part C of the Individuals with Disabilities Education Act \(IDEA\) State Plan](#)
- [Michigan Administrative Rules for Special Education \(MARSE\)](#)
- [Related Resources, Documents and Forms](#)

**Early On Evaluation**

The receipt of a referral for *Early On*, including Michigan Mandatory Special Education (MMSE), by the local lead agency (typically an intermediate school district or ISD) starts the 45-calendar-day timeline to complete the screening (if applicable), initial evaluation, initial assessments of the child and family, and the initial IFSP meeting. More information about the requirements related to a receipt of a referral can be found in the **Referral** section of **The Individualized Family Service Plan (IFSP) Process** chapter of this manual.

It is required that individuals from two different disciplines conduct the initial evaluation. The information gathered upon intake of the referral determines the team members that conduct the initial evaluation. For instance, if a parent explains that the child is two years old and he is using ten words, the evaluation team would consist of a speech therapist, along with another evaluator, to conduct the evaluation.

When a referral is received for a child who has an established condition, it is important to note that it is not required to administer an evaluation tool. Please see the [Early On Michigan Established Conditions list](#) and the [Updated Early On Established Conditions List One Pager](#) for further information about these qualifying conditions. It is important, however, to continue the information gathering process consistent with any other referral.

In conducting a multidisciplinary evaluation for eligibility, no single procedure may be used as a sole method. Practitioners should use a variety of methods, including observation and interviews, to gather evaluation information from multiple sources (Division for Early Childhood (DEC) Recommended Practices, A6). Procedures must include:

- A. Administering an evaluation instrument;
- B. Taking the child's history (including interviewing the parent);

- C. Identifying the child’s level of functioning in each of the developmental areas (cognitive development, physical development (including vision and hearing), communication development, social or emotional development, and adaptive development);
- D. Gathering information from other sources such as family members, other caregivers, medical providers, social workers, and educators, if necessary, to understand the scope of the child’s unique strengths and needs; and,
- E. Reviewing medical, educational, or other records.

### **Administering an evaluation instrument**

There are several evaluation tools that can be used for the purpose of determining eligibility. DEC lists the following recommended practices that apply to the use of tools for eligibility.

1. Practitioners use materials and strategies that are appropriate for the child’s age and level of development and accommodate the child’s sensory, physical, communication, cultural, linguistic, social, and emotional characteristics (A3).
2. Practitioners conduct evaluations that include all areas of development and behavior to learn about the child’s strengths, needs, preferences, and interests (A4).
3. Practitioners conduct evaluations in the child’s dominant language and in additional languages if the child is learning more than one language (A5).

The person utilizing the tool must be trained in the evaluation tool that they are using. For additional qualifications, please see the [Early On Personnel Standards](#)

([https://www.michigan.gov/documents/mde/2-4-15\\_FINAL\\_Personnel\\_Document\\_for\\_posting\\_480825\\_7.pdf](https://www.michigan.gov/documents/mde/2-4-15_FINAL_Personnel_Document_for_posting_480825_7.pdf)) and the [Michigan Administrative Rules for Special Education \(MARSE\)](#)

([https://www.michigan.gov/documents/mde/MARSE\\_Supplemented\\_with\\_IDEA\\_Regs\\_379598\\_7.pdf](https://www.michigan.gov/documents/mde/MARSE_Supplemented_with_IDEA_Regs_379598_7.pdf)).

It is important to read the evaluation tool's manual to see if there are additional qualifications listed. The manual may also indicate whether the tool can be used for eligibility. Generally, an evaluation tool that measures all of the five developmental domains is most comprehensive. However, an additional tool can be used for specific domain/domains if needed. The following evaluation tools are recommended by the Michigan Department of Education (MDE) and meet evaluation requirements identified in 34 CFR 303 and the *Early On* Michigan State Plan.

- Assessment, Evaluation, and Programming System for Infants and Children (AEPS<sup>®</sup>)
- Battelle<sup>®</sup> Developmental Inventory (Battelle)
- Bayley Scales of Infant Development, III (BSID-III)
- Bayley Scales of Infant Development, IV (BSID-IV)
- Brigance<sup>®</sup> Diagnostic Inventory of Early Development III Standardized (BRIGANCE)
- Developmental Assessment of Young Children, Second Edition (DAYC-2)
- Infant Toddler Developmental Assessment (IDA)

### **Taking the child's history (including interviewing the parent)**

The purpose of a developmental history is to obtain information directly from the parents regarding the prenatal, perinatal, and family life experiences which may have influenced the child's current developmental functioning. This is completed through a direct parent interview. During the parent interview, it is important to be an active listener and non-judgmental.

Practitioners obtain information about the child's skills in daily activities, routines, and environments such as home, center, and community (DEC Recommended Practices, A7).

The health status report is part of the child's history. Please see the Medical section below for additional information on collecting health status information. Parents are encouraged to share any previous medical and/or educational records with practitioners.

**Identifying the child's level of functioning in each of the developmental areas**

According to Part C of IDEA, an infant or toddler with a disability means an individual under three years of age who needs early intervention services because the child is experiencing a developmental delay or has been diagnosed with an established condition. An appropriate diagnostic instrument (as described above) and appropriate procedures must measure a developmental delay. Functional skills in the child's daily routines must be documented. The delay must be in one or more of the following areas: cognitive development, physical development (including vision and hearing), communication development, social or emotional development, and adaptive development. Each developmental area must be addressed in the evaluation in order to determine the child's strengths and needs. When an established condition is documented, an evaluation tool is not needed. When eligibility is determined based on the established condition, providers can move on to gathering information which will document information for the child and family assessment and help in the development of the IFSP.

**Gathering Information**

It is important to obtain information from many sources such as family members, other caregivers, medical providers, social workers, and educators to understand the scope of the child's unique strengths and needs. Practitioners use a variety of methods, including observation and interviews, to gather assessment information from multiple sources, including the child's family and other significant individuals in the child's life. (DEC Recommended Practices, A6).

Engaging families as partners in the information collecting process is essential. There are many methods and strategies for gathering information from families and promoting their participation during this process. Some key strategies include:

- Carefully explaining that the purpose of collecting information is to help identify how *Early On* can assist in the child's development and the family's routines.
- Sharing ways the family can be involved, such as interacting with their child and providing information about their child
- Asking the family to identify optimal times of the day for their child as well as times of the day that are more difficult.
- Acknowledging family members' concerns and input about their child's behavior, skills, interests, and development by summarizing their comments.
- Supporting parents in identifying their child's strengths and needs and making informed decisions.
- Checking with the family to confirm that the summary is correct. (Adapted from "Engaging Families as Assessment Partners" Assessment Practitioner Guide 2 of 5. Based upon the following DEC Recommended Practices for Assessment 1, 2, 4, 5, 6, 7, 11.)

Information gathered from family members should be documented as part of the evaluation and eligibility process. Parent/child interaction must be documented as well. Thoroughly describe this interaction using objective, qualitative statements supported by factual narrative, using quotes and anecdotes. Observation of such interactions may describe body language, eye contact, engagement, interests, instances of serve and return between parent and child, joint attention, and/or other such interactions. Some examples of appropriate documentation of parent/child interaction are "Jesus' mom was pointing to pictures of animals in a book and he was making the corresponding animal sounds," or "Tonya was crying and her dad raised his voice in response saying, 'There's nothing to cry about.'"

It is important to use descriptive, non-judgmental statements so that the interaction between the parent and the child can be clearly articulated. This detailed information can be documented on the IFSP, within an

evaluation report, on an evaluation protocol, in a contact log or case notes (dated on or prior to date of IFSP), or on a separate form.

### **Reviewing medical, educational, or other records**

The health status report is a part of taking the child's history. The purpose of the health status report is to obtain information regarding the child's past and current physical development and health status to inform eligibility determination. The health status report is based on a comprehensive physical health examination conducted by a nurse, nurse practitioner, or physician approved for such appraisals. If a comprehensive physical examination has been conducted within three months for a child younger than 18 months old, or within the past six months for a child over 18 months old, by the appropriately designated professional, a current health status appraisal need not be repeated; review of past medical/health records will suffice. It is important that when a health status report is requested, a copy of this request is kept for documentation purposes. The return of the medical documentation from the physician's office is required when making a child eligible under Established Condition. The reason that the return of this information is essential is that it ensures that medical concerns are discussed and considered both as part of eligibility and when determining outcomes. This is completed prior to determination of eligibility.

The evaluation of health status must include vision and hearing reports that may be derived from the following sources:

1. Recent vision and hearing report from doctor (within three months if the child is younger than 18 months, within six months if older). If the child is younger than three months of age, the newborn hearing screening result may be used.
2. A new vision and hearing report from a doctor or health department.

3. *Early On* provider conducting an objective vision and hearing screening, such as a screening conducted using an audiometer.
4. *Early On* provider conducting a subjective vision and hearing screening, such as informal observations of a child's responses to different sounds.

Reviewing all medical information and reports of previous screenings or assessments is an integral part of the process.

### **Prematurity Adjustment**

When conducting evaluations for Part C only or MMSE, *Early On* adjusts for prematurity for every child born earlier than 37 weeks gestation and continues to adjust in ongoing assessment activities until the child reaches the chronological age of 24 months.<sup>1</sup> After the child is two years old (chronologically), adjustments for prematurity are discontinued.

### **Eligibility Criteria**

Eligibility determination is the process of reviewing documentation and/or child evaluation information about the child's health and developmental status to decide if the child is eligible or continues to be eligible for *Early On*. In Michigan, a child may be eligible for *Early On* under one or two components of our system: 1) Part C using eligibility criteria in the *Early On* Michigan State Plan, and 2) MMSE using eligibility criteria in MARSE. Michigan is a birth mandate state which means eligible infants and toddlers receive special education services. MARSE outlines specific requirements for implementing special education in Michigan. MARSE Part 10 clarifies the rules for individuals with disabilities, birth to age three. Please refer to the **Birth Mandate** section in the **Introduction: Part C of the Individuals with Disabilities Act** chapter of the implementation manual for a further description.

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<sup>1</sup> The adjustment for prematurity consists of subtracting the number of weeks of prematurity (i.e., the difference between 40 weeks of full-term gestation and the number of actual weeks of gestation) from the child's current chronological age. The result is the corrected chronological age, adjusting for prematurity.



All infants and toddlers eligible for *Early On* are entitled to services and procedural safeguards through Part C of IDEA. Some infants and toddlers in *Early On* with greater developmental delays or more intense needs also qualify for services through MMSE. This means that a child with a greater need than what would qualify them for Part C only services must have access to MMSE. The criteria for eligibility for MMSE differs from that of Part C only, as follows:

### **Part C**

Eligibility for Part C falls under two categories:

1. **Developmental delay** - A child is found eligible under developmental delay if the child is younger than two months old (adjusted age) and has any delay, and if the child is two months to 36 months old and has a delay of 20 percent or 1 standard deviation below the mean in one or more developmental domains. For children suspected of having a developmental delay, *Early On* will conduct a comprehensive multidisciplinary evaluation of the child. One or more persons representing two or more separate disciplines or professions using informed clinical opinion must conduct the evaluation.

**Established condition** - A child is found eligible under established condition when medical and/or other records indicate there is an established condition with a high probability of resulting in developmental delay. Documentation of the established condition is provided by a health or mental health care provider who is qualified to make the diagnosis. Eligibility category definitions for established conditions can be found on the [Early On Michigan Established Conditions list](#) and the [Updated Early On Established Conditions List One Pager](#)

2. If a child has an established condition, he/she is eligible for *Early On* as long as that diagnosis is

current. No evaluation to determine eligibility is required.

Using informed clinical opinion - *Early On* uses informed clinical opinion, in addition to the documented evidence, when recommending initial eligibility for services under *Early On*. Informed clinical opinion makes use of qualitative and quantitative information to assist in forming a determination regarding difficult to measure aspects of current developmental status and the potential need for early intervention. In order for a provider to use informed clinical opinion, he or she must have appropriate training, previous experience with evaluation and assessment, sensitivity to cultural needs, and the ability to elicit and include family perceptions (Lucas and Shaw, 2012). Informed clinical opinion may not be used to negate the results of evaluation instruments used to establish eligibility.

### **MMSE**

MARSE Part 10, Rule 340.1862 requires that evaluations conducted to determine eligibility for MMSE must meet the requirements of Part C of IDEA and R 340.1705 to R 340.1717 (see also: [Determination of Eligibility for Michigan Mandatory Special Education for Infants and Toddlers, Birth to Age Three Introduction MDE, August, 2018](#)).

MARSE Rules 340.1705 to 340.1717 are definitions of the eligibility categories for special education. Evaluation must indicate that children meet the criteria set forth in rules in order to be eligible for that specific category. The eligibility categories are as follows:

1. MARSE R 340.1705 Cognitive impairment.
2. MARSE R 340.1706 Emotional impairment.
3. MARSE R 340.1707 Deaf or hard of hearing.
4. MARSE R 340.1708 Visual impairment explained.
5. MARSE R 340.1709 Physical impairment.
6. MARSE R 340.1709a Other health impairment.
7. MARSE R 340.1710 Speech and language impairment.
8. MARSE R 340.1711 Early childhood developmental delay.

9. MARSE R 340.1713 Specific learning disability.
10. MARSE R 340.1714 Severe multiple impairment.
11. MARSE R 340.1715 Autism spectrum disorder.
12. MARSE R 340.1716 Traumatic brain injury.
13. MARSE R 340.1717 Deaf-blindness.

The evaluation team for each eligibility category may determine that the child is eligible to receive services under one of the aforementioned eligibility categories. Guidance documents pertinent to infants and toddlers, birth to age three, are available for the following special education eligibility categories:

- [Autism spectrum disorder](#)
- [Early childhood developmental delay](#)
- [Other health impairment](#)
- [Speech and language impairment](#)

Guidance for additional categories is under development. MARSE R 340.1862 requires that determination of eligibility for MMSE, for a child birth to age three with a disability, shall follow all timelines and all *Early On* requirements. When a child is determined eligible for *Early On* (Part C and MMSE), a representative from the evaluation team will inform the family, including prior written notice. The representative will discuss with the family whether any additional child assessment information on one or more of the five developmental domains is needed to develop the IFSP. If additional child assessment data is needed, parental consent must first be obtained.

### **Parent Involvement**

It is essential that parents/caregivers are involved in the evaluation and eligibility process. Parents provide a great deal of information to be utilized in the determination of eligibility. Consistent with the requirements for *Early On* eligibility, it is required that written and dated parental consent be obtained before the initial evaluation and assessment as well as before reevaluation or continued assessment. Also consistent with *Early On* eligibility, prior written notice is required at a reasonable time before proposing or refusing to initiate or change the eligibility, evaluation or

placement of a child, or the provision of services to the child and the child's family.

Parent involvement in the evaluation and eligibility process occurs when parents are afforded many opportunities to provide information about their child's strengths and needs. The connection that is made between the family and provider from the beginning is essential to early intervention and the ability to achieve targeted outcomes. During the evaluation and eligibility determination process, practitioners have involved families to the greatest extent when:

1. Families are actively engaged throughout their child's assessment.
2. Family members share their knowledge about their child's abilities, interests, and challenges in everyday activities.
3. Family members provide information that helps identify the priorities and next steps for their child.

Adapted from the practice guide, DEC Recommended Practices: Assessment 1, 2, 4, 5, 6, 7, 11.

**When a child currently has an IFSP for Part C only and is suspected to be eligible for MMSE**

When a child has a current IFSP with Part C only eligibility and it is suspected that the child may qualify for a category of MMSE eligibility, a referral for a special education evaluation is required. The MMSE team would then complete the evaluation to determine eligibility as described in the '[eligibility determination – MMSE](#)' section of this document.

**Determination that a child is not eligible**

If, based on the evaluation, the local lead agency determines that a child is not eligible for *Early On*, the local lead agency must provide the parent with prior written notice and include information about the parent's right to dispute the eligibility determination through the dispute resolution process. Although not required, the family may be provided information about other community resources that may support the child's learning and development and family engagement.

## **Part C IDEA 2004 Infants and Toddlers with Disabilities Statute**

[Part C of the IDEA](#) authorizes a grant program to aid each state in implementing a system of early intervention services for infants and toddlers with disabilities and their families. Below are sections of the federal statute that are related to evaluation and eligibility within Part C.

### **Section §1432. Definitions**

#### **(3) Developmental delay**

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

#### **(5) Infant or toddler with a disability**

The term "infant or toddler with a disability"—

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

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

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

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

(i) at-risk infants and toddlers; and

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

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

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

### **Section §1434. Eligibility**

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

- (1) has adopted a policy that appropriate early intervention services are available to all infants and toddlers with disabilities in the State and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State, infants and toddlers with disabilities who are homeless children and their families, and infants and toddlers with disabilities who are wards of the State; and
- (2) has in effect a statewide system that meets the requirements of section 1435 of this title.

### **Section §1435 Requirements for statewide system**

(a) In general-

- (1) A rigorous definition of the term "developmental delay" that will be used by the State in carrying out programs under this subchapter in order to appropriately identify infants and toddlers with disabilities that are in need of services under this subchapter.
- (3) A timely, comprehensive, multidisciplinary evaluation of the functioning of each infant or toddler with a disability in the State, and a family-directed identification of the needs of each family of such an infant or toddler, to assist appropriately in the development of the infant or toddler.

### **§1436 Individualized family service plan**

(d) Content of plan.

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

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

### **§1439. Procedural safeguards**

(a) Minimum procedures

The procedural safeguards required to be included in a statewide system under section 1435(a)(13) of this title shall provide, at a minimum, the following:

- (4) The opportunity for parents to examine records relating to assessment, screening, eligibility determinations, and the development and implementation of the individualized family service plan.
- (6) Written prior notice to the parents of the infant or toddler with a disability whenever the State agency or service provider proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or

placement of the infant or toddler with a disability, or the provision of appropriate early intervention services to the infant or toddler.

### **Part C Federal Regulations for IDEA 2004**

The final [Part C Federal Regulations](#) for IDEA 2004 were published in the Federal Register in September 2011 and reflect changes made to the IDEA of 2004. Below are sections of the federal regulations that are related to evaluation and eligibility within Part C.

#### **§ 303.10 Developmental delay.**

*Developmental delay*, when used with respect to a child residing in a State, has the meaning given that term by the State under § 303.111.

#### **§ 303.11 Early intervention service program.**

*Early intervention service program or EIS program* means an entity designated by the lead agency for reporting under §§ 303.700 through 303.702.

#### **§ 303.20 Individualized family service plan.**

*Individualized family service plan or IFSP* means a written plan for providing early intervention services to an infant or toddler with a disability under this part and the infant's or toddler's family that—

(a) Is based on the evaluation and assessment described in § 303.321;

#### **§ 303.21 Infant or toddler with a disability.**

(a) *Infant or toddler with a disability* means an individual under three years of age who needs early intervention services because the individual—

(1) Is experiencing a developmental delay, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas:

- (i) Cognitive development.
- (ii) Physical development, including vision and hearing.
- (iii) Communication development.
- (iv) Social or emotional development.
- (v) Adaptive development; or

(2) Has a diagnosed physical or mental condition that—

- (i) Has a high probability of resulting in developmental delay; and
- (ii) Includes conditions such as chromosomal abnormalities; genetic or congenital disorders; sensory impairments; inborn errors of metabolism; disorders reflecting disturbance of the development of the nervous system; congenital infections; severe attachment disorders; and disorders secondary to exposure to toxic substances, including fetal alcohol syndrome.

(b) *Infant or toddler with a disability* may include, at a State's discretion, an at-risk infant or toddler (as defined in § 303.5).

### **§ 303.24 Multidisciplinary.**

*Multidisciplinary* means the involvement of two or more separate disciplines or professions and with respect to—

(a) Evaluation of the child in §§ 303.113 and 303.321(a)(1)(i) and assessments of the child and family in § 303.321(a)(1)(ii), may include one individual who is qualified in more than one discipline or profession; and

(b) The IFSP Team in § 303.340 must include the involvement of the parent and two or more individuals from separate disciplines or professions and one of these individuals must be the service coordinator (consistent with § 303.343(a)(1)(iv)).

### **§ 303.25 Native language.**

(a) *Native language*, when used with respect to an individual who is limited English proficient or LEP (as that term is defined in section 602(18) of the Act), means—

(1) The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided in paragraph (a)(2) of this section; and

(2) For evaluations and assessments conducted pursuant to § 303.321(a)(5) and (a)(6), the language normally used by the child, if determined developmentally appropriate for the child by qualified personnel conducting the evaluation or assessment.

(b) *Native language*, when used with respect to an individual who is deaf or hard of hearing, blind or visually impaired, or for an individual with no written language, means the mode of communication that is normally used by the individual (such as sign language, braille, or oral communication).

### **§ 303.31 Qualified personnel.**

*Qualified personnel* means personnel who have met State approved or recognized certification, licensing, registration, or other comparable requirements that apply to the areas in which the individuals are conducting evaluations or assessments or providing early intervention services.

### **§ 303.34 Service coordination services (case management).**

(a) *General.* (1) As used in this part, service coordination services mean services provided by a service coordinator to assist and enable an infant or toddler with a disability and the child's family to receive the services and rights, including procedural safeguards, required under this part.

(b) *Specific service coordination services.* Service coordination services include—

(3) Coordinating evaluations and assessments;



- (4) Facilitating and participating in the development, review, and evaluation of IFSPs;

### **§ 303.111 State definition of developmental delay.**

Each system must include the State's rigorous definition of *developmental delay*, consistent with §§ 303.10 and 303.203(c), that will be used by the State in carrying out programs under part C of the Act in order to appropriately identify infants and toddlers with disabilities who are in need of services under part C of the Act. The definition must—

- (a) Describe, for each of the areas listed in § 303.21(a)(1), the evaluation and assessment procedures, consistent with § 303.321, that will be used to measure a child's development; and
- (b) Specify the level of developmental delay in functioning or other comparable criteria that constitute a developmental delay in one or more of the developmental areas identified in § 303.21(a)(1).

### **§303.113 Evaluation, assessment, and nondiscriminatory procedures.**

- (a) Subject to paragraph (b) of this section, each system must ensure the performance of—
  - (1) A timely, comprehensive, multidisciplinary evaluation of the functioning of each infant or toddler with a disability in the State; and
  - (2) A family-directed identification of the needs of the family of the infant or toddler to assist appropriately in the development of the infant or toddler.
- (b) The evaluation and family-directed identification required in paragraph (a) of this section must meet the requirements of § 303.321.

### **§ 303.119 Personnel standards.**

- (a) *General.* Each system must include policies and procedures relating to the establishment and maintenance of qualification standards to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained.
- (b) *Qualification standards.* The policies and procedures required in paragraph (a) of this section must provide for the establishment and maintenance of qualification standards that are consistent with any State approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the profession, discipline, or area in which personnel are providing early intervention services.

### **§ 303.203 Statewide system and description of services.**

Each application must include —

(c) The State's rigorous definition of developmental delay as required under §§ 303.10 and 303.111.

### **§303.300 General.**

The statewide comprehensive, coordinated, multidisciplinary interagency system to provide early intervention services for infants and toddlers with disabilities and their families referenced in § 303.100 must include the following components:

(c) Post-referral policies and procedures that ensure compliance with the timeline requirements in § 303.310 and include—

- (2) Evaluations and assessments as described in §§ 303.321 and 303.322; and
- (3) Development, review, and implementation of IFSPs as described in §§ 303.340 through 303.346.

### **§303.310 Post-referral timeline (45 days).**

(a) Except as provided in paragraph (b) of this section, any screening under § 303.320 (if the State has adopted a policy and elects, and the parent consents, to conduct a screening of a child); the initial evaluation and the initial assessments of the child and family under § 303.321; and the initial IFSP meeting under § 303.342 must be completed within 45 days from the date the lead agency or EIS provider receives the referral of the child.

(b) Subject to paragraph (c) of this section, the 45-day timeline described in paragraph (a) of this section does not apply for any period when—

- (1) The child or parent is unavailable to complete the screening (if applicable), the initial evaluation, the initial assessments of the child and family, or the initial IFSP meeting due to exceptional family circumstances that are documented in the child's early intervention records; or

(2) The parent has not provided consent for the screening (if applicable), the initial evaluation, or the initial assessment of the child, despite documented, repeated attempts by the lead agency or EIS provider to obtain parental consent.

(c) The lead agency must develop procedures to ensure that in the event the circumstances described in (b)(1) or (b)(2) of this section exist, the lead agency or EIS provider must—

- (1) Document in the child's early intervention records the exceptional family circumstances or repeated attempts by the lead agency or EIS provider to obtain parental consent;
- (2) Complete the screening (if applicable), the initial evaluation, the initial assessments (of the child and family), and the initial IFSP meeting as soon as possible after the documented exceptional family circumstances described in paragraph (b)(1) of this section no longer exist or parental consent is obtained for the screening (if applicable), the initial evaluation, and the initial assessment of the child; and

(3) Develop and implement an interim IFSP, to the extent appropriate and consistent with § 303.345.

(d) The initial family assessment must be conducted within the 45-day timeline in paragraph (a) of this section if the parent concurs and even if other family members are unavailable.

### **§ 303.320 Screening procedures (optional).**

(a) *General.*

(2) If the parent consents to the screening and the screening or other available information indicates that the child is—

(i) Suspected of having a disability, after notice is provided under § 303.421 and once parental consent is obtained as required in § 303.420, an evaluation and assessment of the child must be conducted under § 303.321; or

(ii) Not suspected of having a disability, the lead agency or EIS provider must ensure that notice of that determination is provided to the parent under § 303.421, and that the notice describes the parent's right to request an evaluation.

(3) If the parent of the child requests and consents to an evaluation at any time during the screening process, evaluation of the child must be conducted under § 303.321, even if the lead agency or EIS provider has determined under paragraph (a)(2)(ii) of this section that the child is not suspected of having a disability.

(c) *Condition for evaluation or early intervention services.* For every child under the age of three who is referred to the part C program or screened in accordance with paragraph (a) of this section, the lead agency is not required to—

(1) Provide an evaluation of the child under § 303.321 unless the child is suspected of having a disability or the parent requests an evaluation under paragraph (a)(3) of this section; or

(2) Make early intervention services available under this part to the child unless a determination is made that the child meets the definition of infant or toddler with a disability under § 303.21.

### **§303.321 Evaluation of the child and assessment of the child and family.**

(a) *General.*

(1) The lead agency must ensure that, subject to obtaining parental consent in accordance with § 303.420(a)(2), each child under the age of three who is referred for evaluation or early intervention services under this part and suspected of having a disability, receives—

- (i) A timely, comprehensive, multidisciplinary evaluation of the child in accordance with paragraph (b) of this section unless eligibility is established under paragraph (a)(3)(i) of this section; and
  - (ii) If the child is determined eligible as an infant or toddler with a disability as defined in § 303.21—
    - (A) A multidisciplinary assessment of the unique strengths and needs of that infant or toddler and the identification of services appropriate to meet those needs;
    - (B) A family-directed assessment of the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of that infant or toddler. The assessments of the child and family are described in paragraph (c) of this section and these assessments may occur simultaneously with the evaluation, provided that the requirements of paragraph (b) of this section are met.
- (2) As used in this part—
- (i) *Evaluation* means the procedures used by qualified personnel to determine a child's initial and continuing eligibility under this part, consistent with the definition of *infant or toddler with a disability* in § 303.21. An *initial evaluation* refers to the child's evaluation to determine his or her initial eligibility under this part;
  - (ii) *Assessment* means the ongoing procedures used by qualified personnel to identify the child's unique strengths and needs and the early intervention services appropriate to meet those needs throughout the period of the child's eligibility under this part and includes the assessment of the child, consistent with paragraph (c)(1) of this section and the assessment of the child's family, consistent with paragraph (c)(2) of this section; and
  - (iii) *Initial assessment* refers to the assessment of the child and the family assessment conducted prior to the child's first IFSP meeting.
- (3)
- (i) A child's medical and other records may be used to establish eligibility (without conducting an evaluation of the child) under this part if those records indicate that the child's level of functioning in one or more of the developmental areas identified in § 303.21(a)(1) constitutes a developmental delay or that the child otherwise meets the criteria for an infant or toddler with a disability under § 303.21. If the child's part C eligibility is established under this paragraph, the lead agency or EIS provider must conduct assessments of the child and family in accordance with paragraph (c) of this section.
  - (ii) 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; however, in no event may informed clinical opinion be used to negate the results of evaluation instruments used to establish eligibility under paragraph (b) of this section.

(4) All evaluations and assessments of the child and family must be conducted by qualified personnel, in a nondiscriminatory manner, and selected and administered so as not to be racially or culturally discriminatory.

(5) Unless clearly not feasible to do so, all evaluations and assessments of a child must be conducted in the native language of the child, in accordance with the definition of native language in § 303.25.

(6) Unless clearly not feasible to do so, family assessments must be conducted in the native language of the family members being assessed, in accordance with the definition of native language in § 303.25.

(b) Procedures for evaluation of the child. In conducting an evaluation, no single procedure may be used as the sole criterion for determining a child's eligibility under this part. Procedures must include—

- (1) Administering an evaluation instrument;
- (2) Taking the child's history (including interviewing the parent);
- (3) Identifying the child's level of functioning in each of the developmental areas in § 303.21(a)(1);
- (4) Gathering information from other sources such as family members, other care-givers, medical providers, social workers, and educators, if necessary, to understand the full scope of the child's unique strengths and needs; and
- (5) Reviewing medical, educational, or other records.

### **§303.322 Determination that a child is not eligible.**

If, based on the evaluation conducted under § 303.321, the lead agency determines that a child is not eligible under this part, the lead agency must provide the parent with prior written notice required in § 303.421, and include in the notice information about the parent's right to dispute the eligibility determination through dispute resolution mechanisms under § 303.430, such as requesting a due process hearing or mediation or filing a State complaint.

### **§ 303.400 General responsibility of lead agency for procedural safeguards.**

Subject to paragraph (c) of this section, each lead agency must—

(c) Make available to parents an initial copy of the child's early intervention record, at no cost to the parents.

### **§ 303.401 Confidentiality and opportunity to examine records.**

(b) *Confidentiality procedures.* As required under sections 617(c) and 642 of the Act, the regulations in §§ 303.401 through 303.417 ensure the protection of the confidentiality of any personally identifiable data, information, and records collected

or maintained pursuant to this part by the Secretary and by participating agencies, including the State lead agency and EIS providers, in accordance with the protections under the Family Educational Rights and Privacy Act (FERPA) in 20 U.S.C. 1232g and 34 CFR part 99. Each State must have procedures in effect to ensure that—

(2) The parents of infants or toddlers who are referred to, or receive services under this part, are afforded the opportunity to inspect and review all part C early intervention records about the child and the child's family that are collected, maintained, or used under this part, including records related to evaluations and assessments, screening, eligibility determinations, development and implementation of IFSPs, provision of early intervention services, individual complaints involving the child, or any part of the child's early intervention record under this part.

### **§303.420 Parental consent and ability to decline services.**

(b) If a parent does not give consent under paragraph (a)(1), (a)(2), or (a)(3) of this section, the lead agency must make reasonable efforts to ensure that the parent—

(1) Is fully aware of the nature of the evaluation and assessment of the child or early intervention services that would be available; and

(2) Understands that the child will not be able to receive the evaluation, assessment, or early intervention service unless consent is given.

(c) The lead agency may not use the due process hearing procedures under this part or part B of the Act to challenge a parent's refusal to provide any consent that is required under paragraph (a) of this section.

### **§ 303.421 Prior written notice and procedural safeguards notice.**

(a) *General.* Prior written notice must be provided to parents a reasonable time before the lead agency or an EIS provider proposes, or refuses, to initiate or change the identification, evaluation, or placement of their infant or toddler, or the provision of early intervention services to the infant or toddler with a disability and that infant's or toddler's family.

### **§ 303.342 Procedures for IFSP development, review, and evaluation.**

(c) *Annual meeting to evaluate the IFSP.* A meeting must be conducted on at least an annual basis to evaluate and revise, as appropriate, the IFSP for a child and the child's family. The results of any current evaluations and other information available from the assessments of the child and family conducted under § 303.321 must be used in determining the early intervention services that are needed and will be provided.

**Early On Michigan Part C of the Individuals with Disabilities Education Act (IDEA) State Plan**

The [Early On Michigan Part C of IDEA State Plan](#) provides details on the implementation of the Office of Special Education Programs (OSEP), Rules and Regulations 34 CFR Part 303 in Michigan. Below are sections from the State Plan that are related to evaluation and eligibility within *Early On*.

**Section A: Items Aligned with Subpart A of Federal Regulations  
34 CFR 303.1 through 303.37 – General (pg. 2)*****Purpose of the early intervention program for infants and toddlers with disabilities (§ 303.1) (pg. 2)***

The State of Michigan is an eligible recipient of Part C of IDEA funds and has designated MDE as the lead agency. MDE, along with contracted local lead agencies, implements the purpose of this part, which is to provide assistance to:

- enhance the capacity of the local community to identify, evaluate, and meet the needs of historically under-represented populations, particularly minority, low-income, inner-city, and rural populations and infants and toddlers in foster care.

***Definitions (pg. 3)*****Developmental Delay means:**

A. A delay:

1. Of any magnitude (i.e., any delay) for a child up to two months old (adjusted age).
2. Of 20 percent (or one Standard Deviation below the mean) for a child two months to 36 months old.

B. In one or more areas of development (cognitive; physical, including gross and fine motor; communication; social/emotional; adaptive).

C. As measured by an acceptable developmental evaluation method or tool applying informed clinical opinion.

Section D of this State Plan includes the evaluation and assessment procedures to be used for each of the domains noted in B. (Also see Appendix A.)

**Established condition**

means a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.

**Evaluation Instrument**

means a criterion-referenced or norm-referenced instrument used to determine a child's eligibility for *Early On* based on qualifying developmental delay in one or more of the following areas: cognitive development; physical development (including vision and hearing); communication development; social emotional development; or adaptive development.

**Health Status Report**

means documentation of the child's health status, including vision and hearing, by qualified personnel completed within the 45-day timeline. This should include medical information that documents any diagnoses that may make a child eligible for *Early On*. Health status report should include current status from a physical examination conducted within the past three months for a child under 18 months of age or within the past six months for a child over 18 months of age.

**Informed Clinical Opinion (ICO)**

is an independent methodology used by qualified personnel during evaluation and assessment processes in order to make a recommendation as to initial and continuing eligibility for services under Part C and as a basis for planning services to meet child and family needs. ICO makes use of qualitative and quantitative information to assist in forming a determination regarding difficult-to-measure aspects of current developmental status and the potential need for early intervention.<sup>2</sup>

**Medical Information**

means information from a qualified health care professional documenting any diagnoses that may make the child eligible for *Early On*.

**Michigan Mandatory Special Education Act (MMSEA)**

is a Michigan state law passed in 1971, ensuring special education to resident children with disabilities from birth to age 26. Services provided under this act are known as Michigan Mandatory Special Education (MMSE).

**Observational Assessment**

is a component of the child assessment process that includes observing the infant or toddler with parent(s) and/or primary caregiver(s) within the context of his or her caregiving environment, during caretaking or play activities, as well as during other natural interactions.

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<sup>2</sup> Shackelford, J. (May 2002). Informed Clinical Opinion. The National Early Childhood Technical Assistance Center, University of North Carolina, Chapel Hill, NC



**Part C**

means the “Early Intervention System for Infants and Toddlers with Disabilities” presently codified as Part C of IDEA (known in Michigan as *Early On*).

**Section B: Items Aligned with Subpart B of Federal Regulations  
34 CFR 303.100 through 303.126 - Foundations of a Statewide System (pg. 8)*****Michigan eligibility (§ 303.101) (pg. 9)***

It is the policy of the State of Michigan that appropriate early intervention services are available to all eligible infants and toddlers with disabilities in the state and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the state, infants and toddlers with disabilities who are homeless children and their families, and infants and toddlers with disabilities who are wards of the State. The State implements a statewide comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services, for infants and toddlers with disabilities and their families, that meet the requirements of section 635 of IDEA (20 U.S.C 1435), as well as 34 CFR 303.111 through 303.126.

Michigan is a “birth mandate” state, and as such provides support and/or services to individuals from birth to age 26 who meet the eligibility definitions put forth in MARSE under MCL at no cost to the family. Any child birth to age three who qualifies under MMSE is also eligible for *Early On*.

MDE submits the required assurances with the annual application to USED. The annual application (including assurances) provides MDE with an opportunity to submit revisions to existing policies or procedures, or to propose new policies so that Michigan implements a system to conform to the purposes and requirements established in statute. MDE assures that approval from USED will be obtained prior to implementing any new or amended policy or procedure related to the required items in § 303.101(c).

***Components of a Statewide System (pg. 10)*****Definition of Developmental Delay (§ 303.111) (pg. 10)**

Michigan has a definition of developmental delay found in the definitions in Section A of this Plan. Procedures in Section D of this Plan assure the identification of all infants and toddlers meeting Michigan’s criteria for an infant or toddler with a disability.

**Evaluation, assessment, and nondiscriminatory procedures (§ 303.113) (pg. 10)**

Michigan has in effect a system, operated through the local lead agencies, with the ability to provide a timely, comprehensive, multidisciplinary evaluation of the functioning of each infant or toddler with a disability in the state, and a family-directed identification of the needs of each family of such an infant or toddler, to assist appropriately in the development of the infant or toddler in accordance with 20 U.S.C. 1435(a)(3). Further discussion regarding the process of evaluation and assessment is provided in Section D of this plan.

**IFSP (§ 303.114) (pg. 10)**

Michigan has a prototype format for an IFSP that meets the requirements of what must be documented, as well as processes and procedures for development and implementing the IFSP (including service coordination services). Michigan assures that each infant or toddler with a disability and his or her family in the state is provided the support required in the law. Further discussion regarding the IFSP form and process is provided in Section D of this plan.

**Personnel standards (§ 303.119) (pg. 12)**

Michigan has policies and procedures relating to the establishment and maintenance of qualifications to ensure that personnel necessary to implement *Early On* are appropriately and adequately prepared and trained, including the establishment and maintenance of qualifications that are consistent with any State-approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which personnel are providing early intervention services. Assistants who are appropriately trained and supervised in accordance with Michigan law, regulation, or written policy, may assist in the provision of *Early On*. Further, it is the policy of Michigan that appropriately and adequately trained personnel are hired to provide *Early On* services, including, in a geographic area of the state where there is a shortage of such personnel, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet the State personnel standards.

**Components of a local early intervention contract application (pg. 13)**

Funds provided are for the purpose of each local *Early On* service area to:

A. Help in the facilitation of a statewide, comprehensive, coordinated, multidisciplinary, family centered, interagency system of early intervention services to eligible infants and toddlers and their families.

B. Expand and improve existing early intervention services being provided to eligible infants and toddlers and their families through coordination of existing referral and service delivery systems.

C. Provide direct early intervention services to eligible infants and toddlers and their families when no other resources for these services are available. Those eligible for services through this system will include infants and toddlers, birth to age three, who need early intervention services because they:

1. Are experiencing developmental delay, as measured by appropriate diagnostic instruments and procedures in one or more of the following areas: cognitive development, physical development, communication development, social or emotional development or adaptive development, or
2. Have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.

**Section D: Items Aligned with Subpart D of Federal Regulations  
34 CFR 303.300 through 303.346 – Child Find, Evaluations and  
Assessments, and Individualized Family Service Plans (pg. 24)**

***Screening procedures (optional) (§ 303.320) (pg. 29)***

Local lead agencies may adopt screening procedures for those children who have been referred to Part C to determine whether they are suspected of having a developmental delay. If the local lead agency proposes to conduct post-referral screening of a child, it must do the following:

- A. Provide the parent prior written notice of its intent to screen the child.
- B. Include in the prior written notice that consent is required to conduct such screening; that the parent has a right to request an evaluation at any time during the screening process; and that the parent has a right to receive notice of the screening results.
- C. Obtain parental consent before conducting the screening procedures.

If the parent consents to the screening and the screening or other information indicates that the child is suspected of meeting the *Early On* eligibility definition, after prior written notice is provided and once the parental consent is obtained, an evaluation of the child must be conducted. If the child is not suspected of meeting the *Early On* eligibility definition, the local lead agency must ensure that prior written notice of that determination is provided to the parent and describes the parent's right to request an evaluation. If the parent requests and consents to an evaluation at any time during the screening process, evaluation of the child must be conducted. The screening process does not extend the 45-day timeline from referral to initial IFSP meeting.

**Eligibility determination (pg. 30)**

Eligibility determination is the process of reviewing documentation and/or child evaluation information about the child's health and developmental status to decide if the child is eligible or continues to be eligible for *Early On*. Eligibility may be determined in the following manners:

**1. Established condition**

An infant or toddler is eligible for *Early On* if medical and/or other records indicate that the child meets the criteria for an infant or toddler with a disability under § 303.21 as reflected in Michigan's list of established conditions, which may be found on MDE's *Early On* website ([www.michigan.gov/earlyon](http://www.michigan.gov/earlyon)). No evaluation is required.

**2. Developmental delay**

A child's medical and other records may be used to establish eligibility (without conducting an evaluation of the child) if those records indicate that the child's level of functioning in one or more of the developmental areas identified in § 303.21(a)(1) constitutes a developmental delay or that the child otherwise meets the criteria for an infant or toddler with a disability under § 303.21. For infants and toddlers suspected of having a developmental delay, *Early On* will conduct a comprehensive multidisciplinary evaluation of the child. The evaluation will be conducted by one or more persons representing two or more separate disciplines or professions using informed clinical opinion.

**3. Informed clinical opinion**

Informed clinical opinion may be used as an independent basis to establish eligibility, even when other instruments do not establish eligibility; however, in no event may informed clinical opinion be used to negate the results of evaluation instruments used to establish eligibility.

When a child is determined eligible, *Early On* will inform the family, including prior written notice, and will discuss with the family whether any additional child assessment information on one or more of the five developmental domains is needed to develop the IFSP, for which consent has not yet been obtained. No additional child assessment requiring parental consent will be pursued until such parental consent is obtained.

**Determination that a child is not eligible (§ 303.322) (pg. 31)**

If, based on the evaluation, the local lead agency determines that a child is not eligible for *Early On*, the local lead agency must provide the parent with prior written notice and include in the notice information about the parent's right to dispute the eligibility determination through the dispute resolution process.

Although not required, the family may be provided information about community resources.

***Evaluation of the child (§ 303.321) (pg. 31)***

In conducting a multidisciplinary evaluation of the child, no single procedure may be used as a sole criterion for determining a child's eligibility under this part.

Procedures must include:

- A. Administering an evaluation instrument;
- B. Taking the child's history (including interviewing the parent);
- C. Identifying the child's level of functioning in each of the developmental areas on § 303.21(a)(1);
- D. Gathering information from other sources such as family members, other caregivers, medical providers, social workers, and educators, if necessary, to understand the scope of the child's unique strengths and needs; and
- E. Reviewing medical, educational, or other records.

The purpose of a developmental history is to obtain information directly from the parents regarding the prenatal, perinatal, and family life experiences which may have influenced the child's current developmental functioning.

The purpose of the health status report is to obtain information regarding the child's past and current physical development and health status. The health status report is based on a comprehensive physical health examination conducted by a nurse, nurse practitioner, or physician approved for such appraisals. If a comprehensive physical examination has been conducted within the past three months for a child under 18 months, or within the past six months for a child over 18 months, by the appropriately designated professional, a current health status appraisal need not be repeated; review of past medical/health records will suffice.

The evaluation of health status must include vision and hearing reports that may be derived from the following sources:

- A. Recent vision and hearing report from doctor (within three months if the child is under 18 months, within six months if older). If the child is under three months of age, the newborn hearing screening result may be used.
- B. A new vision and hearing report from a doctor or health department.
- C. *Early On* provider conducts an objective vision and hearing screening.
- D. *Early On* provider conducts a subjective vision and hearing screening.

When conducting evaluations, *Early On* will adjust for prematurity for every child born earlier than 37 weeks gestation and continue to adjust in ongoing assessment

activities until the child reaches the chronological age of 24 months.<sup>3</sup> After the child is two years old (chronologically), adjustments for prematurity will be discontinued.

***Use of native language during evaluation and assessment (§ 303.321)  
(pg. 32)***

Unless clearly not feasible to do so, all evaluations and assessments of a child must be conducted in the native language of the child, and all family assessments must be conducted in the native language of the family members being assessed.

**Section E: Items Aligned with Subpart E of Federal Regulations  
34 CFR 303.400 through 303.449 – Procedural Safeguards (pg. 38)**

***Definitions (§ 303.403) (pg. 40)***

A **record** means the type of records covered under FERPA (20 U.S.C. 1232g). An *Early On* record is any information, recorded in any way, maintained by an agency, institution, or *Early On* service provider (whether public or private) or by any party acting for an agency, institution, or *Early On* service provider that is needed to initiate referral or provide services to the eligible child and his/her family under Part C. This would include referral information, evaluation and assessment information, eligibility determination, development, and implementation of IFSPs, summaries of follow-up meetings, requests for due process hearings and complaints dealing with the child.

**Records** include (but are not limited to) files, evaluations, reports, studies, letters, telegrams, minutes of meetings, memoranda, summaries, inter-office or intra-office communications, memoranda reflecting oral conversations, handwritten or other notes, charts, graphs, data sheets, films, videotapes, slides, photographs, sound recordings, disks, tapes, and information stored on microfilm or microfiche or in computer-readable form. This definition does not override the exceptions set forth in FERPA 34 CFR 99.3 "education records" or Child Protective Services (CPS). Release of information regarding specific CPS records is governed by the Child Protection Law. The Child Protection Law is the sole authority for the release of CPS record information. Neither the Freedom of Information Act (FOIA) nor Release of Information requests provide authority for release of CPS record information. Individuals and organizations, including multidisciplinary teams, who provide diagnosis, assessment, consultation, and treatment authorized by the agency or the court have access to CPS information during the course of a CPS investigation or in conjunction with the provision of services.

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<sup>3</sup> The adjustment for prematurity consists of subtracting the number of weeks of prematurity (i.e., the difference between 40 weeks of full-term gestation and the number of actual weeks of gestation) from the child's current chronological age. The result is the corrected chronological age, adjusting for prematurity.

**Notice to parents (§ 303.404) (pg. 41)**

When a child is referred, the local lead agency provides notice to fully inform parents about the confidentiality of information collected in identifying, locating (including child find activities), and evaluating *Early On* eligible infants and toddlers, including:

- A. A description of the children for whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
- B. A summary of the policies and procedures which participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and
- C. A description of all of the rights of parents and children regarding this information, including the rights under the confidentiality provisions detailed in the regulations for Part C.
- D. A description of the extent to which the notice is given in the native languages of the various population groups in the state.

Within ten calendar days of referral, a family will be provided written notice of the referral, including a description of the rights of the Part C confidentiality provisions. The notice includes an explanation of any proposed action or inaction relative to identification, and any impending screening or initial evaluation/assessment, and a description of the procedural safeguards afforded to them under Part C.

**Fees for records (§ 303.409) (pg. 43)**

No fee may be collected for the first copy of the child's IFSP or evaluation. A participating agency must provide at no cost to parents, a copy of each evaluation, assessment of the child, family assessment, and IFSP as soon as possible after each IFSP meeting. Except for the records identified above, a participating agency may charge a fee for copies of records which are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records. A participating agency may not charge a fee to search for or to retrieve *Early On* information.

**Parental Consent and Notice (pg. 46)****Parental consent and ability to decline services (§ 303.420)**

Written and dated parental consent in accordance with § 303.420 must be obtained:

- A. Before conducting the optional post-referral screening (§ 303.320) used to determine whether a child is suspected of having a disability, as well as before

conducting the initial evaluation and assessment of a child and any subsequent reevaluation or ongoing assessment;

B. Before implementing the provision of *Early On* services for the first time (i.e., at the time that the initial IFSP is developed) and for any subsequent IFSP; and

C. Before release of personally identifiable information pursuant to § 303.414.

The regulations also require parental written consent prior to accessing certain funds in those states where public benefits or insurance (i.e., Medicaid, MiChild) or private insurance is part of the system of payments under § 303.520.

If consent is not given for items (A) and (B) in the above list, the local lead agency shall make reasonable efforts to ensure that the parent:

A. Is fully aware of the nature of the evaluation and assessment or the services that would be available; and

B. Understands that the child will not be able to receive the evaluation and assessment or services unless consent is given.

### **Prior written notice and procedural safeguards notice (§ 303.421)**

#### *A. General*

Prior written notice must be given to the parents of an infant or toddler a reasonable time before a local lead agency proposes or refuses to initiate or change the identification, evaluation, or placement of the child. Prior written notice must be given to the parents of a child eligible for *Early On* a reasonable time before a local lead agency proposes or refuses to initiate or change the provision of appropriate early intervention services to the child and the child's family.

### **Michigan Administrative Rules for Special Education (MARSE)**

The [Michigan Administrative Rules for Special Education \(MARSE\)](#) outlines specific requirements for implementing the federal and state laws for special education. MARSE has been revised several times throughout the years. The MARSE revision in 2012 yielded the addition of Part 10 in order to clarify the rules for individuals with disabilities, birth to age three.

### **MARSE R 340.1862 Individualized family service plan; time lines; eligibility. Rule 162.**

- (1) Eligibility for Michigan special education services for all children with a disability birth to age 3 shall be determined by and documented in an individualized family service plan.
- (2) Evaluations conducted to determine eligibility for Michigan special education services shall meet the requirements of 34 CFR part 303 and R 340.1705 to R 340.1717.



- (3) Determination of eligibility for Michigan special education services, for a child birth to 3 with a disability shall follow all timelines and requirements pursuant to 34 CFR part 303.
- (4) Special education services for children birth to 3 with disabilities shall be all of the following:
  - (a) Determined by the child's individual needs and specified in an individualized family service plan.
  - (b) Provided by an approved or endorsed early childhood special education teacher or approved related services staff.
  - (c) Provided for not less than 72 clock hours over 1 year. The time line begins upon receipt of signed parental consent to provide services.
  - (d) Provided in an appropriate early childhood setting, school setting, community setting, or family setting.
  - (e) Have a parent participation and education component.
- (5) Approved related services staff shall work under the educational direction of an approved or endorsed early childhood special education teacher.

**MARSE R 340.1705: Cognitive impairment; determination. Rule 5.**

- (1) Cognitive impairment shall be manifested during the developmental period and be determined through the demonstration of all of the following behavioral characteristics:
  - (a) Development at a rate at or below approximately 2 standard deviations below the mean as determined through intellectual assessment.
  - (b) Scores approximately within the lowest 6 percentiles on a standardized test in reading and arithmetic. This requirement will not apply if the student is not of an age, grade, or mental age appropriate for formal or standardized achievement tests.
  - (c) Lack of development primarily in the cognitive domain.
  - (d) Impairment of adaptive behavior.
  - (e) Adversely affects a student's educational performance.
- (2) A determination of impairment shall be based upon a full and individual evaluation by a multidisciplinary evaluation team, which shall include a psychologist.

**MARSE R 340.1706 Emotional impairment; determination; evaluation report. Rule 6.**

- (1) Emotional impairment shall be determined through manifestation of behavioral problems primarily in the affective domain, over an extended period of time, which adversely affect the student's education to the extent that the student cannot profit from learning experiences without special education support. The

problems result in behaviors manifested by 1 or more of the following characteristics:

- (a) Inability to build or maintain satisfactory interpersonal relationships within the school environment.
  - (b) Inappropriate types of behavior or feelings under normal circumstances.
  - (c) General pervasive mood of unhappiness or depression.
  - (d) Tendency to develop physical symptoms or fears associated with personal or school problems.
- (2) Emotional impairment also includes students who, in addition to the characteristics specified in subrule (1) of this rule, exhibit maladaptive behaviors related to schizophrenia or similar disorders. The term "emotional impairment" does not include persons who are socially maladjusted, unless it is determined that the persons have an emotional impairment.
- (3) Emotional impairment does not include students whose behaviors are primarily the result of intellectual, sensory, or health factors.
- (4) When evaluating a student suspected of having an emotional impairment, the multidisciplinary evaluation team report shall include documentation of all of the following:
- (a) The student's performance in the educational setting and in other settings, such as adaptive behavior within the broader community.
  - (b) The systematic observation of the behaviors of primary concern which interfere with educational and social needs.
  - (c) The intervention strategies used to improve the behaviors and the length of time the strategies were utilized.
  - (d) Relevant medical information, if any.
- (5) A determination of impairment shall be based on data provided by a multidisciplinary evaluation team, which shall include a full and individual evaluation by both of the following:
- (a) A psychologist or psychiatrist.
  - (b) A school social worker.

### **MARSE R 340.1707 Deaf or hard of hearing. Rule 7.**

- (1) The term "deaf or hard of hearing" refers to students with any type or degree of hearing loss that interferes with development or adversely affects educational performance. "Deafness" means a hearing loss that is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification. The term "hard of hearing" refers to students who have permanent or fluctuating hearing loss that is less severe than the hearing loss of students who are deaf and that generally permits the use of the auditory channel as the primary means of developing speech and language skills.

- (2) A determination of impairment must be based upon a full and individual evaluation by a multidisciplinary evaluation team, which shall include an audiologist and an otolaryngologist or otologist.

**MARSE R 340.1708 Visual impairment explained; determination. Rule 8.**

- (1) A visual impairment shall be determined through the manifestation of both of the following:
  - (a) A visual impairment which, even with correction, interferes with development or which adversely affects educational performance. Visual impairment includes both partial sight and blindness.
  - (b) One or more of the following:
    - (i) A central visual acuity for near or far point vision of 20/70 or less in the better eye after routine refractive correction.
    - (ii) A peripheral field of vision restricted to not more than 20 degrees.
    - (iii) A diagnosed progressively deteriorating eye condition.
- (2) A determination of impairment shall be based upon a full and individual evaluation by a multidisciplinary evaluation team, which shall include an ophthalmologist or optometrist.
- (3) If a student cannot be tested accurately for acuity, then functional visual assessments conducted by a teacher certified in visual impairment may be used in addition to the medical evaluation for determination of impairment.
- (4) For students with visual impairment who have a visual acuity of 20/200 or less after routine refractive correction, or who have a peripheral field of vision restricted to not more than 20 degrees, an evaluation by an orientation and mobility specialist shall be conducted. The orientation and mobility specialist shall also include in the report a set of recommended procedures to be used by a mobility specialist or a teacher of students with visual impairment in conducting orientation and mobility training activities.

**MARSE R 340.1709 "Physical impairment" defined; determination. Rule 9.**

- (1) "Physical impairment" means severe orthopedic impairment that adversely affects a student's educational performance.
- (2) A determination of disability shall be based upon a full and individual evaluation by a multidisciplinary evaluation team, which shall include assessment data from 1 of the following persons:
  - (a) An orthopedic surgeon.
  - (b) An internist.
  - (c) A neurologist.
  - (d) A pediatrician.
  - (e) A family physician or any other approved physician as defined in 1978 PA 368, MCL 333.1101 et seq.

**MARSE R 340.1709a "Other health impairment" defined; determination. Rule 9a.**

- (1) "Other health impairment" means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, which results in limited alertness with respect to the educational environment and to which both of the following provisions apply:
  - (a) Is due to chronic or acute health problems such as any of the following:
    - (i) Asthma.
    - (ii) Attention deficit disorder.
    - (iii) Attention deficit hyperactivity disorder.
    - (iv) Diabetes.
    - (v) Epilepsy.
    - (vi) A heart condition.
    - (vii) Hemophilia.
    - (viii) Lead poisoning.
    - (ix) Leukemia.
    - (x) Nephritis.
    - (xi) Rheumatic fever.
    - (xii) Sickle cell anemia.
  - (b) The impairment adversely affects a student's educational performance.
- (2) A determination of disability shall be based upon a full and individual evaluation by a multidisciplinary evaluation team, which shall include 1 of the following persons:
  - (a) An orthopedic surgeon.
  - (b) An internist.
  - (c) A neurologist.
  - (d) A pediatrician.
  - (e) A family physician or any other approved physician as defined in 1978 PA 368, MCL 333.1101 et seq.

[Determination of Eligibility for Michigan Mandatory Special Education for Infants and Toddlers, Birth to Age Three Other Health Impairment Guidance](#)

[Michigan Mandatory Special Education \(MMSE\) Other Health Impairment \(OHI\) Resource Sample Letter](#)

**MARSE R 340.1710 "Speech and language impairment" defined; determination. Rule 10.**

- (1) A "speech and language impairment" means a communication disorder that adversely affects educational performance, such as a language impairment, articulation impairment, fluency impairment, or voice impairment.

- (2) A communication disorder shall be determined through the manifestation of 1 or more of the following speech and language impairments that adversely affects educational performance:
  - (a) A language impairment which interferes with the student's ability to understand and use language effectively and which includes 1 or more of the following:
    - (i) Phonology.
    - (ii) Morphology.
    - (iii) Syntax.
    - (iv) Semantics.
    - (v) Pragmatics.
  - (b) Articulation impairment, including omissions, substitutions, or distortions of sound, persisting beyond the age at which maturation alone might be expected to correct the deviation.
  - (c) Fluency impairment, including an abnormal rate of speaking, speech interruptions, and repetition of sounds, words, phrases, or sentences, that interferes with effective communication.
  - (d) Voice impairment, including inappropriate pitch, loudness, or voice quality.
- (3) Any impairment under subrule (2)(a) of this rule shall be evidenced by both of the following:
  - (a) A spontaneous language sample demonstrating inadequate language functioning.
  - (b) Test results on not less than 2 standardized assessment instruments or 2 subtests designed to determine language functioning which indicate inappropriate language functioning for the student's age.
- (4) A student who has a communication disorder, but whose primary disability is other than speech and language may be eligible for speech and language services under R 340.1745(a).
- (5) A determination of impairment shall be based upon a full and individual evaluation by a multidisciplinary evaluation team, which shall include a teacher of students with speech and language impairment under R 340.1796 or a speech and language pathologist qualified under R 340.1792.

[Determination of Eligibility for Michigan Mandatory Special Education for Infants and Toddlers, Birth to Age Three Speech and Language Impairment Guidance](#)  
[Warning Signs for Communication Delays in the First Three Years of Life](#)

**MARSE R 340.1711 "Early childhood developmental delay" defined; determination. Rule 11.**

- (1) "Early childhood developmental delay" means a child through 7 years of age whose primary delay cannot be differentiated through existing criteria within

R 340.1705 to R 340.1710 or R 340.1713 to R 340.1716 and who manifests a delay in 1 or more areas of development equal to or greater than 1/2 of the expected development. This definition does not preclude identification of a child through existing criteria within R 340.1705 to R 340.1710 or R 340.1713 to R 340.1716.

- (2) A determination of early childhood developmental delay shall be based upon a full and individual evaluation by a multidisciplinary evaluation team.

[Determination of Eligibility for Michigan Mandatory Special Education for Infants and Toddlers, Birth to Age Three Early Childhood Developmental Delay Guidance](#)

**MARSE R 340.1713 Specific learning disability defined; determination.  
Rule 13.**

- (1) "Specific learning disability" means a disorder in 1 or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of cognitive impairment, of emotional impairment, of autism spectrum disorder, or of environmental, cultural, or economic disadvantage.
- (2) In determining whether a student has a learning disability, the state shall:
  - (a) Not require the use of a severe discrepancy between intellectual ability and achievement.
  - (b) Permit the use of a process based on the child's response to scientific, research-based intervention.
  - (c) Permit the use of other alternative research-based procedures.
- (3) A determination of learning disability shall be based upon a full and individual evaluation by a multidisciplinary evaluation team, which shall include at least both of the following:
  - (a) The student's general education teacher or, if the student does not have a general education teacher, a general education teacher qualified to teach a student of his or her age or, for a child of less than school age, an individual qualified by the state educational agency to teach a child of his or her age.
  - (b) At least 1 person qualified to conduct individual diagnostic examinations of children and who can interpret the instructional implications of evaluation results, such as a school psychologist, an authorized provider of speech and language under R 340.1745(d), or a teacher consultant.

**MARSE R 340.1714 Severe multiple impairment; determination. Rule 14.**

- (1) Students with severe multiple impairments shall be determined through the manifestation of either of the following:
  - (a) Development at a rate of 2 to 3 standard deviations below the mean and 2 or more of the following conditions:
    - (i) A hearing impairment so severe that the auditory channel is not the primary means of developing speech and language skills.
    - (ii) A visual impairment so severe that the visual channel is not sufficient to guide independent mobility.
    - (iii) A physical impairment so severe that activities of daily living cannot be achieved without assistance.
    - (iv) A health impairment so severe that the student is medically at risk.
  - (b) Development at a rate of 3 or more standard deviations below the mean or students for whom evaluation instruments do not provide a valid measure of cognitive ability and 1 or more of the following conditions:
    - (i) A hearing impairment so severe that the auditory channel is not the primary means of developing speech and language skills.
    - (ii) A visual impairment so severe that the visual channel is not sufficient to guide independent mobility.
    - (iii) A physical impairment so severe that activities of daily living cannot be achieved without assistance.
    - (iv) A health impairment so severe that the student is medically at risk.
- (2) A determination of impairment shall be based upon a full and individual evaluation by a multidisciplinary evaluation team, which shall include a psychologist and, depending upon the disabilities in the physical domain, the multidisciplinary evaluation team participants required in R 340.1707, R 340.1708, or R 340.1709, R 340.1709a, or R 340.1716.

**MARSE R 340.1715 "Autism spectrum disorder" defined; determination. Rule 15.**

- (1) Autism spectrum disorder is considered a lifelong developmental disability that adversely affects a student's educational performance in 1 or more of the following performance areas:
  - (a) Academic.
  - (b) Behavioral.
  - (c) Social.

Autism spectrum disorder is typically manifested before 36 months of age. A child who first manifests the characteristics after age 3 may also meet criteria. Autism spectrum disorder is characterized by qualitative impairments in reciprocal social interactions, qualitative impairments in communication, and restricted range of interests/repetitive behavior.

- (2) Determination for eligibility shall include all of the following:
  - (a) Qualitative impairments in reciprocal social interactions including at least 2 of the following areas:
    - (i) Marked impairment in the use of multiple nonverbal behaviors such as eye-to-eye gaze, facial expression, body postures, and gestures to regulate social interaction.
    - (ii) Failure to develop peer relationships appropriate to developmental level.
    - (iii) Marked impairment in spontaneous seeking to share enjoyment, interests, or achievements with other people, for example, by a lack of showing, bringing, or pointing out objects of interest.
    - (iv) Marked impairment in the areas of social or emotional reciprocity.
  - (b) Qualitative impairments in communication including at least 1 of the following:
    - (i) Delay in, or total lack of, the development of spoken language not accompanied by an attempt to compensate through alternative modes of communication such as gesture or mime.
    - (ii) Marked impairment in pragmatics or in the ability to initiate, sustain, or engage in reciprocal conversation with others.
    - (iii) Stereotyped and repetitive use of language or idiosyncratic language.
    - (iv) Lack of varied, spontaneous make-believe play or social imitative play appropriate to developmental level.
  - (c) Restricted, repetitive, and stereotyped behaviors including at least 1 of the following:
    - (i) Encompassing preoccupation with 1 or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus.
    - (ii) Apparently inflexible adherence to specific, nonfunctional routines or rituals.
    - (iii) Stereotyped and repetitive motor mannerisms, for example, hand or finger flapping or twisting, or complex whole-body movements.
    - (iv) Persistent preoccupation with parts of objects.
- (3) Determination may include unusual or inconsistent response to sensory stimuli, in combination with subdivisions (a), (b), and (c) of subrule (2) of this rule.
- (4) While autism spectrum disorder may exist concurrently with other diagnoses or areas of disability, to be eligible under this rule, there shall not be a primary diagnosis of schizophrenia or emotional impairment.
- (5) A determination of impairment shall be based upon a full and individual evaluation by a multidisciplinary evaluation team including, at a minimum, a psychologist or psychiatrist, an authorized provider of speech and language under R 340.1745(d), and a school social worker.



[Determination of Eligibility for Michigan Mandatory Special Education for Infants and Toddlers, Birth to Age Three Autism Spectrum Disorder Guidance](#)

[Michigan Mandatory Special Education \(MMSE\) Autism Spectrum Disorder Guidance Appendix A](#)

**MARSE R 340.1716 "Traumatic brain injury" defined; determination. Rule 16.**

- (1) "Traumatic brain injury" means an acquired injury to the brain which is caused by an external physical force and which results in total or partial functional disability or psychosocial impairment, or both, that adversely affects a student's educational performance. The term applies to open or closed head injuries resulting in impairment in 1 or more of the following areas:
  - (a) Cognition.
  - (b) Language.
  - (c) Memory.
  - (d) Attention.
  - (e) Reasoning.
  - (f) Behavior.
  - (g) Physical functions.
  - (h) Information processing.
  - (i) Speech.
- (2) The term does not apply to brain injuries that are congenital or degenerative or to brain injuries induced by birth trauma.
- (3) A determination of disability shall be based upon a full and individual evaluation by a multidisciplinary evaluation team, which shall include an assessment from a family physician or any other approved physician as defined in 1978 PA 368, MCL 333.1101 et seq.

**MARSE R 340.1717 "Deaf-blindness" defined; determination. Rule 17.**

- (1) Deaf-blindness means concomitant hearing impairment and visual impairment, the combination of which causes severe communication and other developmental and educational needs that cannot be accommodated in special education programs without additional supports to address the unique needs specific to deaf-blindness. Deaf-blindness also means both of the following:
  - (a) Documented hearing and visual losses that, if considered individually, may not meet the requirements for visual impairment or hearing impairment, but the combination of the losses affects educational performance.
  - (b) Such students function as if they have both a hearing and visual loss, based upon responses to auditory and visual stimuli in the environment, or during vision and hearing evaluations.

- (2) A determination of the disability shall be based upon data provided by a multidisciplinary evaluation team which shall include assessment data from all of the following:
- (a) Medical specialists such as any of the following:
    - (i) An ophthalmologist.
    - (ii) An optometrist.
    - (iii) An audiologist.
    - (iv) An otolaryngologist.
    - (v) An otologist.
    - (vi) A family physician or any other approved physician as defined in 1978 PA 368, MCL 333.1101 et seq.
  - (b) A teacher of students with visual impairment.
  - (c) A teacher of students with hearing impairment.

### **Related Resources, Documents and Forms**

#### **Resources:**

[Early On Michigan Established Conditions list](#)

[Early On Personnel Standards](#)

Division for Early Childhood. 2014. *DEC Recommended Practices*. Retrieved from <http://www.dec-sped.org/dec-recommended-practices>

Early Childhood Technical Assistance Center. 2020. *Engaging Families as Assessment Partners. Assessment Practitioner Practice Guide 2 of 5*. Retrieved from [https://ectacenter.org/~pdfs/decrp/PGP\\_ASM2\\_engagingfamilies\\_2018.pdf](https://ectacenter.org/~pdfs/decrp/PGP_ASM2_engagingfamilies_2018.pdf)

Early Childhood Technical Assistance Center. 2020. *Practice Improvement Tools: Using the DEC Recommended Practices website*. Retrieved from <https://ectacenter.org/decrp/>

Michigan Department of Education. 2018. *Determination of Eligibility for Michigan Mandatory Special Education for Infants and Toddlers, Birth to Age Three Introduction*. Retrieved from [https://eotta.cresa.org/Files/Uploads/New/188/Intro\\_MMSE\\_Guidance\\_Birth\\_To\\_3.pdf](https://eotta.cresa.org/Files/Uploads/New/188/Intro_MMSE_Guidance_Birth_To_3.pdf)

National Early Childhood Technical Assistance Center Notes. 2012. No. 28 *Informed Clinical Opinion* by Anne Lucas and Evelyn Shaw. Retrieved from <https://ectacenter.org/~pdfs/pubs/nnotes28.pdf>

[Updated Early On Established Conditions List One Pager](#)