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

Purpose

The purpose of this document is to provide guidance for the determination of Michigan Mandatory Special Education (MMSE) eligibility for infants and toddlers, birth to age three, exhibiting Early Childhood Developmental Delay (ECDD) as defined by the Individuals with Disabilities Education Act and the Michigan Administrative Rules for Special Education (MARSE). For children 3–7 years of age, please see the Determination of Eligibility for ECDD found on the Michigan Department of Education website.

Personnel who will be able to utilize this guidance include:

- (i) Part C personnel (including special education personnel) considering a referral of a child.
- (ii) Multidisciplinary evaluation team members.
- (iii) Administrators.
- (iv) State-level Part C and Michigan Mandatory Special Education (MMSE) monitors.

This document serves to clarify eligibility process in order to ensure:

- Consistency among school districts within and across counties.
- Compliance with current Michigan special education laws.
- Implementation of current best practices.

Acronyms

ECDD – Early Childhood Developmental Delay
ESA – Educational Service Agency
ICO – Informed Clinical Opinion
IDEA – Individuals with Disabilities Education Act
IFSP – Individual Family Service Plan
ISD – Intermediate School District
MARSE – Michigan Administrative Rules for Special Education
MMSE – Michigan Mandatory Special Education
SLI – Speech and Language Impairment
WIC – Women, Infants and Children

Applicable Regulations

Individuals with Disabilities Education Act (IDEA), Part C, 34 CFR § 303 (2011)

§ 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.
 - (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.

§ 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.

Michigan Administrative Rules for Special Education (2013)

R 340.1701(b) "Multidisciplinary evaluation team" means a minimum of two persons who are responsible for evaluating a student suspected of having a disability. The team shall include at least one special education teacher or other specialist who has knowledge of the suspected disability.

R 340.1711 "Early childhood developmental delay" defined, determination.

- (1) "Early childhood developmental delay" means a child through seven years of age whose primary delay cannot be differentiated through existing criteria within R340.1705 to R 340.1710 (Cognitive Impairment, Emotional Impairment, Hearing Impairment, Visual Impairment, Physical Impairment, Other Health Impairment, and Speech & Language Impairment) or R 340.1713 to R340.1716 (Specific Learning Disability, Severe Multiple Impairment, Autism Spectrum Disorder, Traumatic Brain Injury) and who manifests a delay in one or more areas of development equal to or greater than one half 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.

R 340.1862 Individualized family service plan; timelines; eligibility. Part 10, Rule 162.

- (1) Eligibility for Michigan special education services for all children with a disability birth to age three 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 three with a disability shall follow all timelines and requirements pursuant to 34 CFR part 303.
- (4) Special education services for children birth to three 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 one 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.

Considerations

ECDD may be used as a category of eligibility only when it is determined that the child's primary delay cannot be attributed to another eligibility category in the MARSE. If a child meets ECDD criteria, he/she cannot meet any other criteria under any other eligibility rule.

Consideration of ECDD eligibility includes:

- The impact on access to and participation in functional age-appropriate activities, which cannot be differentiated among existing eligibility categories; and
- A child whose developmental delay is equal to or greater than half of the age equivalent in one or more areas of development.

For an infant or toddler birth to age three, "functional performance" is an appropriate substitution for "educational performance", which is interpreted as how the impairment adversely impacts the child's functioning. Since infants and toddlers are not in an educational school-based setting, consideration of how the child's ability to function as part of child's daily routine, including respect of the family culture, is used instead.

A child's natural environment may be his/her home, childcare setting or any other place where similar aged children without disabilities participate.

Determining Eligibility for ECDD

The information-gathering process to determine eligibility includes the following three steps:

- Evaluation
- Data collection
- Data analysis

Evaluation

Evaluation is the procedure used by qualified personnel to determine a child's initial and continuing eligibility (IDEA § 303.321). A multidisciplinary evaluation team, consisting of a minimum of two persons, is responsible for completing all domain and individual evaluation when a child is suspected of having a disability. While specific disciplinary team members are not identified in MARSE, team members should be selected based on the child's suspected areas of disability.

According to the Michigan Part C State Plan, adjusting for prematurity is needed for every child born earlier than 37 weeks' gestation. This adjustment should continue until the child reaches the chronological age of 24 months. After the child is two years old (chronologically), adjustments for prematurity will be discontinued.

For all children ages birth to three, the evaluation must be multidisciplinary and include all of the following domains:

- Physical development (including vision and hearing)
- Cognitive development (thinking, learning and playing)
- Communication development (talking, listening, understanding)
- Social or emotional development (feelings, getting along with others), and
- Adaptive development (self-help skills, coping)

In conducting a multidisciplinary ECDD evaluation, no single procedure may be used as the sole criterion for determining a child's eligibility under this part. The evaluation must include all of the following:

- Administration of an evaluation instrument or instruments that include all developmental domains.
- The child's history, including an interview of the parent(s).
The purpose of a developmental history is to obtain information directly from the parent(s) regarding the prenatal, perinatal, and family life experiences which may have influenced the child's current developmental functioning, which also includes the parent child observation.
- Initial assessment of the child's level with respect to the developmental domains identified in § 303.21(a)(1) and listed above.
- Review of medical records or health status reports.
The purpose of reviewing health information is to gain an understanding of 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 gathering of information from other sources, such as family members, other caregivers, social workers and educators, if necessary, to understand the full scope of the child's unique strengths and needs.

Data Collection

Four data collection methods are recommended. Examples of these methods are:

- (1) Review of current information
- (2) Interview
- (3) Observations
- (4) Assessment

One method for collecting data may corroborate information from another method or fill in gaps where information is missing. The data that is collected should represent all aspects of the child's development in order to fully inform the eligibility determination and instructional planning process.

1. Review of Current Information

A comprehensive records review should be conducted to gain an understanding of the child's overall development. For infants and toddlers, relevant information may include sources such as:

- (i) Outside medical reports/diagnoses
- (ii) Information from in-home providers
- (iii) *Early On*
- (iv) Early Head Start
- (v) Women, Infants and Children (WIC)
- (vi) Health department nurses
- (vii) Child care centers
- (viii) Information provided by the child's family members

The parent may have relevant information from outside sources that make a meaningful contribution to the evaluation process. Teams must consider the information and recommendations from all outside reports. This does not require that the team accept a recommendation for eligibility or services from outside sources as direction for the action of the team.

2. Interview

A structured interview is used with parents, caregivers, and others to obtain information about the child's developmental rate and sequence. The interview process involves

collecting information regarding development as reported by people familiar with the child's demonstration of skills and behaviors. The best results are obtained when the perspectives of parents, caregivers, specialists, and the individual child are combined.

Interviews are also the preferred method for gathering contextual information to clarify a child's history, describe variability across settings, and identify family priorities. Interviewees should pay particular attention to information about birth history, developmental milestones, medical history, and parent concerns. To reduce redundancy in similar questioning of the same person, evaluators can coordinate schedules if multiple members need to interview the same individuals.

3. Observations

Direct observation of parent-child interaction is required for collection of evaluation data. The practice of observing young children as they play and interact during daily activities and routines is an essential component of the evaluation process, which 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.

Observations of parent-child interaction and specific behaviors must reflect the child's social interaction, communication skills, behaviors, and the impact of sensory factors. These observations should illustrate the contexts in which a child's strengths and challenges are presented and provide a representative sample of the child's typical behaviors and use of materials in the home and various settings.

Observation of play must be used with infants and toddlers to assess verbal and nonverbal communication, social initiation and responsiveness, and play skills. Evaluators observe how the child typically approaches toys and people in the room before observing how the child reacts to a higher level of support, such as a semi-structured game (e.g., rolling a ball back and forth) in an attempt to identify what appears to motivate the child to participate in these activities.

4. Assessment

Best practices when assessing young children include the use of multiple sources of information to build a profile of growth and development. Conclusions about a young child's development should be based on a variety of assessments so that patterns in performance over time can be examined.

A comprehensive assessment includes informal and formal evaluations such as rating scales, direct individualized testing, and other normative and criterion referenced tests.

No single measure or assessment can be used as the sole criterion when determining eligibility for ECDD.

Maintaining a flexible approach to administering assessments is essential to ensure an environment that accurately measures the child's capabilities. Evaluators must make deliberate choices when selecting and administering tools, such as selecting an appropriate setting (home, child care setting, other) and scheduling an appropriate length of time for the session based on the child and family's needs.

Many factors can affect a child's performance on these assessments, such as his/her interest, motivation, cooperation, fatigue, and the ability to understand and attend to task demands. Complicating this further is that the child may be presented with a new task in an unfamiliar situation by an unknown person. These factors, combined with the fact that the skills in question are still in the process of development, makes standardized assessment difficult for young children. Therefore, results should be interpreted carefully as performance is likely to change as the child gets older.

- Information derived from these observation methods are used to make an informed clinical opinion (ICO). The inherent difficulty in determining the extent of a delay in infants and toddlers through the use of conventional measures has long been acknowledged. For this reason, ICO has been the primary alternative method sanctioned by IDEA to promote early intervention eligibility determination since the law was first enacted. ICOs have the distinct advantage of blending *qualitative* observations about subtle attributes of children with *quantitative* observations about their developmental and behavioral capabilities, producing more powerful and representative appraisals about status, needs, and progress. Please see the Appendix/Resource section for additional information.

Note of Clarification

Interpretation of the criteria "equal to or greater than half of the expected development" should be based on the use of *age equivalent scores*. For example, a child with a chronological age of 24 months with an age-equivalent score of 12 months in one or more of the six areas of development meets this portion of the criteria.

Scores from criterion referenced age-based tests are valid indicators of child performance, but are not always obtainable. In some cases, scores or percentiles can be used to make a decision regarding ECDD eligibility in conjunction with ICO. Regardless of the measurement used, in all cases the interpretation of results in eligibility determination recommendation requires team consensus and ICO.

Data Analysis

The data analysis process is an important step in completing the evaluation for ECDD eligibility. Information should be considered from all sources, including:

- (i) Record reviews from educational, medical, social worker or other providers.
- (ii) Interviews with parent(s) and/or other family members.
- (iii) Any assessments or evaluations which were administered.

Once information is gathered, the multidisciplinary evaluation team should carefully analyze the data. Each evaluator should review the available data to determine if the delay in development is equal to or greater than half of the expected development. The evaluation team should then organize all of the various data including an examination of exclusionary factors (see below). The team then analyzes the relationship of the data to each applicable area of the MARSE for each developmental/evaluation section of the Individual Family Service Plan (IFSP).

During the data analysis process:

- Each evaluator analyzes data collected as it pertains to the ECDD criteria.
- The team discusses each developmental area to determine if a delay in the child's development is "equal to or greater than half of expected development."
- The team considers if criteria eligibility is met for any other area of special education eligibility.
- The team considers and completes the developmental/evaluation section of the IFSP, documenting whether the developmental delay requires special education and related services.
- The evaluation team generates eligibility recommendations for the IFSP Team.

Consideration of Exclusionary Factors

The following factors must be addressed by the evaluation team when considering early childhood developmental delay eligibility:

- Infants and toddlers who may be *at risk of future substantial developmental delay* but do not currently meet the criteria are not eligible under this category.
- Toddlers with a delay in communication, *primarily due to the family's native language being other than English*, are not eligible for special education programs and services.

Eligibility Recommendations

After considering the available data, the multidisciplinary team will make a recommendation for a child's eligibility for ECDD. To find a child eligible under this category, the following factors must be true:

- The child is less than three years of age.

- The child’s primary disability cannot be differentiated under any other special education rule.
- The child demonstrates a delay in one or more areas of development that is equal to or greater than one half of the child’s expected development.
- The suspected disability is not due to limited English proficiency.
- The suspected disability adversely affects the child’s functional performance and requires special education programs/services in order to support participation and ability to benefit from the functional experience.

Example 1: The parent reports there are concerns on how their child interacts with siblings and others. The child care provider stated the child often plays or sits in the corner of the room by himself and is difficult to engage in activities. Evaluators observed him struggling to communicate his wants and often becoming angry. When there are global delays in communication, cognition, emotional, and social development and the child is functioning at half the chronological age, and it is not clear which area primarily affects performance, ECDD may be considered.

Example 2: If a child has a 50% speech/language delay and 50% delay in cognition, ECDD may be considered. The reason is that it’s unclear the child would qualify as a child with a Speech and Language Impairment alone; rather, the child is exhibiting deficits in cognition that constitute a more global delay.

Example 3: A child has a 50% delay in the fine motor domain as well as a 40% delay in coping skills, a 30% delay in gross motor skills, and a 40% delay in speech/language. The parent was not able to state what her primary concern is with the child, as each activity in their daily routines were very difficult. With all the information gathered and reviewed by the team, ECDD may be considered. The reason is that it’s not clear that the one area of half of the expected development in the fine motor domain would qualify this child for the category of Physical Impairment; rather, the child is exhibiting global delays.

Documentation and Service Provision

Services are designed to meet:

- (i) The developmental needs of each child eligible under *Early On*.
- (ii) The needs of the family related to enhancing the child’s development.

The child’s eligibility (label) does NOT dictate the program or service. Rather, the child’s IFSP team must make a data-based decision to determine appropriate services, in order to meet the outcomes identified by the team.

Each IFSP team (including the parent(s) and other team members) will carefully consider the most appropriate setting(s) most likely to achieve the outcomes desired. It is rare that

early intervention services cannot be provided in the natural environment. The team may determine that settings other than the natural environment are most appropriate, but only when the desired outcomes cannot be achieved satisfactorily in a natural environment. Consideration of service delivery includes the provider(s) who best meet(s) the child's needs and location of where the service is best delivered (home, community, and child care), frequency, length and intensity of service(s).

Termination of Eligibility

Eligibility as a child with ECDD may be terminated when:

- The child no longer meets ECDD criteria.
- Analysis of data demonstrates the child meets criteria in a different eligibility category. *Example:* The evaluation team report summarizes that ECDD criteria is no longer met due to evaluation data that concludes the child meets criteria under a speech and language impairment (SLI). In this case, the primary delay is more clearly attributed to criteria that support SLI eligibility.

Appendix/Resources

ECTA Informed Clinical Opinion revised in the [NECTAC Notes no. 28 August 2012](http://ectacenter.org/~pdfs/pubs/nnotes28.pdf) by Jo Shackelford (<http://ectacenter.org/~pdfs/pubs/nnotes28.pdf>).

Charlevoix-Emmet ISD. (2014) Early Childhood Developmental Delay Guidelines.

Division for Early Childhood. (2014). [DEC recommended practices in early intervention/early childhood special education 2014.](http://www.dec-sped.org/recommendedpractices)
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- Lillian Cummings-Pulliams, Wyoming Public Schools
- Laura Goldthwait; Michigan Department of Education, Office of Great Start
- Diane Heinzleman, Charlevoix-Emmet ISD
- Laura LaMore, Grand Rapids Public Schools
- Lisa Lepine, The Arc of Macomb

- Denise Ludwig, Grand Valley State University
- Steve Polega, Genesee ISD
- Zoe Starkweather, Michigan Alliance for Families
- Deanna Strudwick, St. Joseph ISD
- Nancy Surbrook; Clinton County RESA, Office of Innovative Projects
- Charles Thomas; Michigan Department of Education, Office of Special Education

Facilitators:

- Criss Hickey; Clinton County RESA, Office of Innovative Projects; *Early On* Training & Technical Assistance Specialist
- Jean Wassenaar; Clinton County RESA, Office of Innovative Projects; *Early On* Training & Technical Assistance Specialist

Resources:

- Sherri Boyd, Michigan Alliance for Families
- Jessica Brady; Michigan Department of Education, Office of Special Education
- Christy Callahan; Clinton County RESA, Office of Innovative Projects
- Karen Fales, Blue Heron Consulting
- Emily Houk, Research To Practice Consulting
- Nancy Surbrook; Clinton County RESA, Office of Innovative Projects
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