

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

Table of Contents

Determination of Eligibility for Michigan Mandatory Special Education for Infants and Toddlers, Birth to Age Three Other Health Impairment Guidance..... 1

 Purpose2

 Acronyms.....2

 Applicable Regulations3

 Individuals with Disabilities Education Act (IDEA), Part C, 34 CFR §303 (2011)3

 § 303.321 Evaluation of the child and assessment of the child and family. 3

 § 303.321 Evaluation of the child and assessment of the child and family.4

 MARSE R 340.1709a “Other health impairment” defined; determination. Rule 9a. ..4

 R 340.1862 Individualized family service plan; timelines; eligibility.....6

 Considerations6

 Clarification of Terminology7

 Determining Eligibility for OHI9

 Eligibility Recommendations 12

 Termination of Eligibility..... 12

 Appendix/Resources 13

 Acknowledgements..... 13

Determination of Eligibility for Michigan Mandatory Special Education for Infants and Toddlers, Birth to Age Three Other Health Impairment 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 an "Other health impairment" (OHI) as defined by the Michigan Administrative Rules for Special Education (MARSE).

Persons who will be able to utilize this guidance include:

- Part C personnel (including special education personnel) considering a referral of an infant or toddler.
- Multidisciplinary evaluation team members including parent or guardian.
- Individualized Family Service Plan (IFSP) team members, including parent or guardian.
- Administrators.

This document serves to clarify the eligibility process to ensure:

- Consistent practice among Intermediate School Districts within the state.
- Compliance with Michigan special education law and administrative rules.
- Implementation of best practices.
- Appropriate determination of eligibility within this category.

Acronyms

ADHD - Attention Deficit Hyperactivity Disorder

ED - U.S. Department of Education

ESA – Educational Service Agency

ICO – Informed Clinical Opinion

IDEA – Individuals with Disabilities Education Act

IEP - Individualized Education Program

IFSP – Individualized Family Service Plan

ISD – Intermediate School District

MARSE – Michigan Administrative Rules for Special Education

MMSE – Michigan Mandatory Special Education

OHI - Other Health Impairment

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

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
- (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.

§ 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

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

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.

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

(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.

Michigan Administrative Rules for Special Education (MARSE) (October 2015)

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

"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:
 - 1) Asthma
 - 2) Attention deficit disorder.
 - 3) Diabetes.
 - 4) Epilepsy.
 - 5) A heart condition.
 - 6) Hemophilia.

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

- 7) Lead poisoning.
 - 8) Leukemia.
 - 9) Nephritis.
 - 10) Rheumatic fever.
 - 11) 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 one 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.

Federal Part C Regulations defines a child with a disability as one with a physical or mental condition that can lead to a developmental delay. *Early On* Michigan list of Established Conditions can be found in the resource section.

R 340.1862 Individualized family service plan; timelines; eligibility. 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.

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

- (5) Approved related services staff shall work under the educational direction of an approved or endorsed early childhood special education teacher.

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

- (6) 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.
- (7) 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.
- (8) 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.
- (9) 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.
- (10) Approved related services staff shall work under the educational direction of an approved or endorsed early childhood special education teacher.

Considerations

The purpose of this section is to discuss considerations specific to determination of Other Health Impairment (OHI) eligibility for infants and toddlers, birth to three years of age, where special education would be incorporated into an *Early On* individualized family service plan (IFSP).

Michigan is a "Birth Mandate" state, making it somewhat unique in requiring the provision of special education for MMSE/MARSE eligible children from birth instead of age three.

"Other health impairment" (OHI) is defined as having limited strength, vitality or alertness to due chronic or acute health problems. If OHI is suspected, the evaluation and determination must be predicated on the essential components; having limited strength, vitality or alertness; for OHI eligibility.

Determination of Eligibility for Michigan Mandatory Special Education for Infants and Toddlers, Birth to Age Three

Other Health Impairment Guidance

Clarification of Terminology

This section includes clarification of terminology for Michigan's OHI definition and determination rule, as well as implications for evaluation planning.

- **Chronic or acute health problem:** Both IDEA and MARSE are silent on the duration required to constitute a "chronic" or "acute" health problem. The following can be used as guidance to help determine if a condition is chronic or acute:
 - a. **Health Problem:** Both IDEA and MARSE contain a list of health problems associated with limitations in strength, vitality, and alertness. The specific examples given could represent archetypal categories for OHI. For example, lead poisoning could be thought of as representing exposure to one or more environmental substances that could cause an impairing health problem; ADHD could be thought of as representing a category of health problem that may result in limitations in alertness; asthma could be thought of as representing a category of health problems that can lead to limited stamina, etc.

Public comments to the 2006 U.S. Department of Education (ED) proposed IDEA rule included requests that additional health conditions be added to the OHI list of health problems. The ED rejected the addition of dysphagia, fetal alcohol syndrome (FAS), bipolar disorders, and other organic neurological disorders in the definition of OHI because, in its analysis, these conditions are commonly understood to be health impairments.

IDEA is silent on whether a medical diagnosis is required to document the existence of the health problem, leaving this to the respective states to decide. The Michigan OHI rules require that a multidisciplinary evaluation team, including a physician, conduct the full and individual evaluation for suspected OHI.

The following definitions are from the Kent ISD OHI guidance, as well as many other ISD guidance from across the state:

- b. **Chronic Condition:** A health problem that is long term and may be one or more of the following:
 - i. Incurable;
 - ii. Have residual features resulting in limitations of daily living functions requiring special assistance or adaptations;
 - iii. Develop slowly and persist for a long period of time, often the remainder of the life span. Chronic health problems may include degenerative or deteriorating conditions.
- c. **Acute Condition:** A health problem that is one or more of the following:
 - i. Begins abruptly and with marked intensity, then subsides;
 - ii. Has a rapid onset, severe symptoms, and a short course. The residual effects of the acute health problem may be short-term or

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

persistent.

- **Limited strength, vitality or alertness:** Only one of these three limitations must be present in any individual case, though it is possible that more than one will apply. There is no official definition of these terms at the federal or state level. However, based on dictionary definitions, symptomatology of the specific health problems as listed in the Federal law, and infant and toddler developmental milestones, these three terms are presented as follows to help determine eligibility for OHI:
 - a. **Strength:** Bodily or muscular power; capacity for physical exertion; mental power, force, or exertion; the ability to resist force, strain, wear, etc.
 - i. Child may exhibit:
 1. Need for moderate to maximum assistance for sitting or standing balance;
 2. Need for moderate to maximum assistance for transitions into and out of positions; or
 3. Need for adaptive equipment.
 - b. **Vitality:** Although similar to strength, strength presents as an objective measure or capacity, while vitality can be thought of more as a qualitative measure. Vitality is, sufficient energy to fully participate in daily routines and capacity for endurance, energy, and animation.
 - i. Child may exhibit:
 1. Moderate to severe fatigue with activity;
 2. Inactive physiological state resulting from limited vitality and alertness;
 3. Lack of initiation of gross and fine motoric movements and motor processes that would typically precede active engagement; or
 4. Need for adaptive equipment.
 - c. **Alertness:** Attentiveness; awareness; keenness; ability to be observant/ready in the moment; able to direct attention, concentration; responsiveness; engagement.
 - i. Child may exhibit:
 1. Moderate to severe sensory processing challenges demonstrated by hyper or hypo sensitivity to environment; or
 2. Cognitive capacities appearing to lack sharpness, acuity, and rigor with decreased active processing and mental shifting of awareness surrounding attention, orientation, and memory functions.
- **Resulting in adverse impact** on ability to participate in age appropriate activities: The three potential limitations of strength, vitality, and alertness emanating from a given health problem could be observed in any number of environments. In this important next step of the OHI analysis, for older students the data sought in the evaluation process should help determine whether the health problem limitations in strength, vitality or alertness, individually or collectively, produce the MARSE required adverse impact on educational performance.

Determination of Eligibility for Michigan Mandatory Special Education for Infants and Toddlers, Birth to Age Three

Other Health Impairment Guidance

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 the child’s ability to function within the child and family’s daily routine, including respect for 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.

The following questions may help with consideration of a child’s functional performance during an OHI evaluation process.

- Strength:
 - Does the child have the strength to roll, hold head, sit, stand, or move about as these activities occur in the natural environment?
 - Is the child able to hold toys, utensils, or other tools?
 - Do limitations in strength require so much compensatory effort as to cause fatigue that in turn affects vitality and alertness for participation in daily routines and family activities?
- Vitality:
 - Does the child fall asleep or require frequent rest due to the health problem?
 - Is the child lethargic, unable to sustain physical or mental exertion despite apparently adequate strength?
- Alertness:
 - Does the child respond to social initiations, playful engagements, etc. in an appropriate manner?
 - Does the child appear overly responsive to extraneous stimuli, or under-responsive to relevant stimuli, throughout the course of the day?

Determining Eligibility for OHI

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

- Evaluation;
- Data Collection; and
- 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 a full and individual evaluation when a child is suspected of having a disability. While specific disciplinary team members

Determination of Eligibility for Michigan Mandatory Special Education for Infants and Toddlers, Birth to Age Three

Other Health Impairment Guidance

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)

Data Collection

A full and individual evaluation for Other Health Impairment (OHI) begins with the collection, review, and analysis of existing data. Data sources may include health records, information provided by the parents, observations, and previous evaluations. A review of existing data may indicate that either enough information is available to make a recommendation for eligibility or that additional information is needed. If additional information is needed, the best way of gathering the information must be determined, which may include completing additional evaluation tools or gathering additional information in another way.

Evaluations must contain data from multiple sources, including:

- Physician and Outside Evaluation Reports

Michigan eligibility criteria for OHI requires medical documentation of a chronic or acute health problem from a physician or physician's assistant within one year of the evaluation report. This input must be specifically documented as part of the evaluation process. Ideally, along with listing the diagnosed health problem, the physician will indicate possible effects to strength, vitality and/or alertness and how such impact manifests itself. An example form for documentation of physician input is included in the resource section.

A medical diagnosis alone is not sufficient for determining OHI eligibility. The IFSP team will determine eligibility based on the federal regulations and state rules regarding OHI. The IFSP team must include all relevant personnel for determining eligibility, as well as consider information, diagnoses, and recommendations presented in reports from outside agencies. While the presence of a medical diagnosis is the domain of a physician, the determination

Determination of Eligibility for Michigan Mandatory Special Education for Infants and Toddlers, Birth to Age Three

Other Health Impairment Guidance

of adverse impact and need for special education services is made by the IFSP team. The evaluation team members must thoroughly understand the features of the diagnosed health condition so that they are able to recognize the symptoms and effects in the natural environment, seeking clarification when necessary.

- Input from Family, Caregivers, Service Coordinator/Providers

For a comprehensive understanding of the medical diagnosis and impact on the child's daily activities, input should be sought from family, caregivers, and providers using routines based interviews, rating scales, or a variety of other methods.

- a. Family/Caregiver – Provides information about the child through informal and formal means, e.g., outside agency records regarding assessments/services, developmental history, relevant medical history, and information relating to the child's participation in functional activities across all domains. Parents provide their perspective on the impact of the health problem at home, in community settings, and their concerns about the impact on daily activities/routines.
- b. Service Coordinator/Provider – Service Coordinators/Providers share professional input regarding the impact of the child's diagnosis on daily activities at home and in community settings. In addition, they may be able to provide child's functional level, strategies used at home, and resources.

- Observation of Child's Performance in their Natural Environment

Observations are an essential component of the evaluation process. Observations should occur over time, during activities, and in settings relevant to the areas of concern. Focus of the observations should be on strength, vitality or alertness, including a heightened alertness to environmental stimuli. The observations are documented and summarized in the evaluation report.

Eligibility under OHI does not require a developmental delay, but rather that a medical diagnosis exists and the child's ability to fully participate in age appropriate activities is adversely impacted.

Data Analysis

The IFSP team will analyze the data gathered to determine whether the child's diagnosis adversely affects the child's ability to fully participate in daily activities due to limited strength, vitality, or alertness to the extent that special education is recommended.

Rather than focusing on educational performance, the OHI evaluation should consider the impact the health condition has on the child's ability to participate/function in age appropriate activities. A chronic or acute health condition can impact multiple areas of a

Determination of Eligibility for Michigan Mandatory Special Education for Infants and Toddlers, Birth to Age Three

Other Health Impairment Guidance

young child's development and learning, including self-care, motor skills, language, social, and behavior.

Eligibility Recommendations

The MARSE R 340.1709a "Other health impairment" defines OHI eligibility as having a diagnosed chronic or acute health condition that results in limited strength, vitality, or alertness (including a heightened alertness to environmental stimuli, which results in limited alertness with respect to the educational environment) and has an adverse impact on educational performance.

R 340.1709a(1)(a) provides a list of examples of chronic or acute health problems. *Early On Michigan* also has an approved list of Established Conditions which would be considered chronic or acute health conditions. Medical documentation of the health condition from an orthopedic surgeon, an internist, a neurologist, a pediatrician, or a family physician (or other approved physician as defined in 1978 PA 368, MCL 333.1101 et seq.) must be available. The medical professional providing this documentation would be a member of the multidisciplinary evaluation team.

Typically, infants and toddlers do not attend school, therefore the components considered for OHI eligibility should reflect the child's natural environment. A child's natural environment may be his/her home, childcare setting, or any other place where similar aged children without disabilities participate.

Limited vitality and alertness for a child who is under the age of three presents as an inactive physiological state, a lack of initiation of gross and fine motoric movements and/or motor processes that would typically proceed active engagement. Cognitive capacities appear to lack sharpness, acuity, and rigor with decreased active processing and mental shifting of awareness surrounding attention, orientation, and memory functions. The need for assistance to aid in sitting and balance, as well as transitioning into and out of positions, should be considered. It should be noted if there is fatigue associated with the activity or issues with sensory processing.

Standardized assessments are only one source of data. Standard scores are not necessarily a true assessment of impact on a young child's ability to participate in age appropriate activities. Age equivalent scores, percentage of delay, family impact, functional checklists, and observation of child in natural environments, medical reports, and information about the diagnosis are all valid sources of data. Eligibility determination is based on an analysis of comprehensive data from a variety of sources.

Termination of Eligibility

If the IFSP Team (including at least one current medical professional providing documentation) suspects that the health problem no longer limits strength, vitality, or

Determination of Eligibility for Michigan Mandatory Special Education for Infants and Toddlers, Birth to Age Three

Other Health Impairment Guidance

alertness or adversely impacts the child's functional performance to the point of requiring special education, a reevaluation should be conducted. Parent consent must be obtained before conducting a reevaluation to terminate eligibility under the OHI category.

Termination of MMSE eligibility under OHI would be appropriate if:

- 1) The medical condition has stabilized to the extent that the child no longer needs special education support related to his/her health condition;
- 2) The medical condition has changed (i.e. is no longer a factor, has lessened, or progressed) to the extent that the child's functional performance has significantly changed and the need for and/or intensity of special education is in question; or
- 3) The child is showing ability to adequately participate (socially, behaviorally, and physically) in family and community, and for these reasons no longer need special education support related to his/her health condition.

If data supports that the health problem no longer results in limited strength, vitality or alertness and therefore no longer adversely impacts functional performance to the point that special education is required, OHI eligibility may be terminated. Prior to terminating OHI eligibility, consider if the child might qualify for MMSE under any other category. If not, the child should be exited from MMSE, but may continue to be eligible for Part C, but only under either an established condition or developmental delay.

Appendix/Resources

Early On Established Conditions document

Sample OHI Physician letter developed for Kent ISD local service area

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

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