

# **ELIGIBILITY POLICY AND DEFINITIONS FOR ELIGIBLE INFANTS AND TODDLERS TO BE SERVED UNDER PART C OF THE INDIVIDUALS WITH DISABILITIES EDUCATION IMPROVEMENT ACT OF 2004 IN DELAWARE**

(Revised October 2014)

## **I Purpose:**

The purpose of this policy is to define the eligibility criteria for Child Development Watch, the Delaware Part C, Birth to Three Early Intervention program; the procedures for eligibility determination; and to ensure that eligibility determinations for early intervention (EI) are made in accordance with the Birth to Three/CDW policies and Part C of the Individuals with Disabilities Education Improvement Act.

The population eligible for early intervention services in Delaware under Part C of the Individuals with Disabilities Education Improvement Act of 2004 includes infants and toddlers with established conditions (disabilities) and/or developmental delays.

To establish Part C eligibility, the presence of an established condition must be confirmed by a licensed professional. A multidisciplinary assessment including available current evaluations is required to develop the Individualized Family Service Plan (IFSP). Entitlement under the definition of established condition continues as long as the specific established condition exists (within the Part C age limits).

## **II Definition(s):**

### **Child:**

A child is an infant or toddler under the age of three (3) with a disability that is referred to or receiving EI services.

### **Early Intervention (EI) Program:**

Early Intervention program refers to Child Development Watch within the Birth to Three Early Intervention System who provides services for of infants and toddlers with disabilities and their families

### **Early Intervention (EI) Services:**

Early Intervention (EI) services are developmental services that

- Are provided under public supervision;
- Are selected in collaboration with the parents;
- Are provided at no cost, except, where Federal or State law provides for a system of payments by families, including a schedule of sliding fees;
- Are designed to meet the developmental needs of an infant or toddler with a disability and the needs of the family to assist appropriately in the infant's or toddler's development, as identified by the IFSP team;
- Meet the standards of Delaware and part C, in which EI services are provided, including the requirements of part C;
- Are provided by qualified personnel;
- To the maximum extent appropriate, are provided in natural environments; and
- Are provided in conformity with an IFSP.

### **Individualized Family Service Plan (IFSP):**

An Individualized Family Service Plan (IFSP) is a working document agreed upon by family members, EI service providers and the CDW service coordinator to address the special needs of eligible children from birth to three (3)..

### **Individuals with Disabilities Education Improvement Act (IDEIA):**

The Individuals with Disabilities Education Improvement Act is the federal law set forth by the United States that governs how states and public agencies provide early intervention special education and related services to children with disabilities.

### **Infant or Toddler with a Disability (Child):**

A child under three (3) years of age who needs EI services because s/he is experiencing a developmental delay in one or more of the following areas:

- Cognitive development;
- Physical development, including vision and hearing;
- Communication development;
- Social or emotional development;
- Adaptive development; or
- Is diagnosed with a physical or mental condition that has a high probability of resulting in a developmental delay.

## **III Principles and Procedures:**

### **A. Definition of Developmental Delay for Eligibility.**

1. In Delaware, a child is considered to be experiencing a developmental delay that establishes eligibility for part C if, as measured by appropriate diagnostic instruments and procedures, the child exhibits one or more of the following criteria:
  - A delay of 25% or greater when compared to age expected level of development in one or more of the following developmental domains: cognition, physical/motor, social-emotional, adaptive;
  - A delay of 25% or greater in receptive language, without a delay in one of the other developmental domains;
  - Any delay in communication in conjunction with a delay of 25% or greater in one or more of the following developmental domains: cognitive, physical/motor, social-emotional, adaptive;
  - At least 1.75 deviation below the mean in any developmental domain when measured by a normed, standardized instrument;
2. Children who qualify for a birth mandate educational classification according to Delaware Department of Education, specifically under the Administrative Code for Autism, Deaf-Blindness, Deafness, Hearing Impairment, and Visual Impairment Including Blindness will qualify as an established condition under Delaware Part C.

## **B. Evaluation and Assessment Procedures to Establish Eligibility and Measure a Child's Development**

1. Procedures for evaluation and assessment to measure a child's development include an evaluation, by qualified personnel, of the child's level of functioning in each of the areas of development as listed above. This evaluation may be used to establish a developmental delay, according to Delaware's definition above, in one or more areas.
  - a. Standardized, norm-referenced measures can be used as a multi-domain testing process or in single areas of stated concern to provide standard scores (standard deviation or percentile). The qualified professionals completing the evaluation utilize their professional experience and expertise (informed clinical opinion) when considering the evaluation results.
  - b. Informed clinical opinion is used for each child to support, augment, or validate the final information and findings.
2. Informed clinical opinion shall be used as an independent basis to establish a child's eligibility even when other instruments do not establish eligibility. Eligibility through utilization of informed clinical opinion must be determined through a multidisciplinary evaluation and assessment, by at least two qualified professionals representing different disciplines, who have knowledge and expertise in the areas of stated concern identified by the parents or referral source. In no event may informed clinical opinion be used to negate the results of evaluation instruments used to establish eligibility.
3. 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 constitutes a developmental delay or that a child has a diagnosed condition that may result in a developmental delay. A child and family assessment is required for IFSP development.
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. All evaluations and assessments of a child and family assessments shall be conducted in the native language of the family members being assessed unless clearly not feasible to do so.
  - a. The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, or
  - b. The language normally used by the child, if determined developmentally appropriate for the child by qualified personnel conducting the evaluation or assessment.
  - c. 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).

## **C. Eligibility Based on an Established Condition.**

A child is eligible for EI services when s/he has a diagnosed physical or mental condition that has a high probability of resulting in a developmental delay. A complete list is documented in a centralized data base and can be accessed as necessary through the Child Development Watch Clinic Managers in New Castle County at 302-283-7240 or in Kent and Sussex Counties at 302-424-7300 or toll free in Kent and Sussex at 800- 752-9393. The Established Condition list shall be used when determining a child is eligible for Part C (See Attachment 1).

1. To establish eligibility based on established condition using a diagnosis not included on the list, the MDA team shall:
  - a. Contact the CDW Clinic Manager for approval to use the diagnosed condition to establish eligibility
  - b. Include information from the diagnostic work-up, including physician reports and recommendations; and

- c. Include other supporting research or data, e.g., research journal articles, text information, etc., which supports the fact that a child has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.
  - d. A regional CDW Medical Director will review all information and make a determination.
2. When a diagnosed condition is used to establish eligibility, diagnostic reports or supporting data will be included in the child's file for verification of eligibility.
3. When a child has both, an established condition and a developmental delay, the established condition takes precedence as the reason for eligibility.

#### **D. Procedures for Parental Notification of Eligibility Determination.**

1. When, based on the initial evaluation, CDW determines that a child is eligible or is not eligible for early intervention, CDW must provide the parent with prior written notice and include in the notice information about the parent's right to dispute the eligibility determination.
  - a. The notice must be in sufficient detail to inform parents about the action that is being proposed or refused; summary of the evaluation results; the reasons for taking the action; and all procedural safeguards that are available, including a description of mediation, how to file a State complaint and a due process complaint, and any timelines under those procedures.
  - b. The notice must be written in language understandable to the general public and provided in the native language of the parent or other mode of communication used by the parent unless it is clearly not feasible to do so.
2. Documentation supporting evaluation results must be maintained. The results of any evaluations including standard deviations/percentiles, diagnostic research, and/or informed clinical opinions of those performing eligibility determinations must be kept in the child's file.

#### **IV Authority:**

34 CFR § 303.31: [Qualified personnel](#)

34 CFR § 303.113: [Evaluation, assessment, and nondiscriminatory procedures](#)

34 CFR § 303.321: [Evaluation of the child and assessment of the child and family](#)

34 CFR § 303.322: [Determination that a child is not eligible](#)

34 CFR § 303.404: [Notice to Parents](#)

## **Timely, Comprehensive, Multidisciplinary Evaluation and Assessment**

### **I Purpose:**

The purpose of this policy is to describe how Child Development Watch, the Delaware Part C, Birth to Three Early Intervention program shall ensure timely, comprehensive, multidisciplinary evaluations, and assessments of the child and the child's family.

### **II Definition(s):**

#### **Assessment:**

Assessment means the ongoing procedures used by qualified personnel to identify the child's unique strengths and needs and the EI services appropriate to meet those needs throughout the child's eligibility. These procedures include the assessment of the child and the family.

#### **Consent:**

Consent consists of the following:

- The parent has been fully informed of all information relevant to the activity for which consent is sought and in the parent's native language when possible;
- The parent understands and agrees in writing to the carrying out of the activity for which the parent's consent is sought;

- The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time; and
- If a parent revokes consent, that revocation is not retroactive (i.e., it does not apply to an action that occurred before the consent was revoked).

**Day:**

Day means calendar day, unless otherwise indicated.

**Early Intervention (EI):**

Early Intervention (EI) refers to programs or services which are selected in collaboration with parents, and are designed to meet the developmental needs of a child and the needs of the family to assist in the child's development.

**Early Intervention (EI) Records:**

Early Intervention (EI) records are all records regarding a child that are required to be collected, maintained, or used under part C and Federal regulations. EI records are also referred to as "education records".

**Evaluation:**

Evaluation means the procedures used by qualified personnel to determine a child's initial and continuing eligibility under part C, consistent with the definition of infant or toddler with a disability and Delaware's eligibility criteria.

**Individualized Family Service Plan (IFSP):**

An Individualized Family Service Plan (IFSP) is a written document identifying appropriate EI services for a child and their family agreed upon by the IFSP Team. The IFSP is based on the evaluation and assessments completed for the child and the family.

**Infant or Toddler with a Disability (Child):**

A child under three (3) years of age who needs EI services because s/he is experiencing a developmental delay in one or more of the following areas:

- Cognitive development;
- Physical development, including vision and hearing;
- Communication development;
- Social or emotional development;
- Adaptive development; or
- Is diagnosed with a physical or mental condition that has a high probability of resulting in a developmental delay.

**Initial Assessment:**

Initial assessment refers to the assessment of the child and the family assessment conducted prior to the child's first IFSP meeting.

**Initial Evaluation:**

Initial evaluation refers to the child's evaluation to determine his/her initial eligibility under Part C.

**Lead Agency (LA):** Delaware Department of Health and Social Services is the Lead Agency for Part C.

**Local Education Agency (LEA):**

A Local Education Agency (LEA) refers to the public school district (Part B Preschool Program) where the family resides.

**Multidisciplinary:**

Multidisciplinary refers to the involvement of two (2) or more individuals from separate disciplines or professions conducting evaluations and assessments.

**Native Language:**

The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child.

**Parent:**

A biological or adoptive parent of a child, a foster parent, a guardian generally authorized to act as the child's parent or authorized to make EI, educational, health, or developmental decisions for the child, an individual acting in the place of a biological or adoptive parent with whom the child lives or an individual who is legally responsible for the child's welfare, or an educational surrogate parent.

**Qualified Personnel:**

Personnel who have met state approved or recognized certification, registration, licensing, or other comparable requirements that apply to the areas in which the individuals are conducting evaluations, assessments, or providing EI services.

**State Education Agency (SEA):** The State Educational Agency (SEA) is the Delaware Department of Education.

### III Principles and Procedures:

**A. Post-Referral Timeline (45 Day Timeline Requirement):**

1. The initial evaluation and the initial assessments of the child and family and the initial IFSP meeting shall be completed within forty-five (45) days from the date CDW receives the referral of the child.

**B. Prior Written Notice and Consent:**

1. Written prior notice shall be given to parents prior to conducting evaluations and assessment of a child.
2. Signed parental consent shall be obtained prior to conducting evaluations and assessments of a child.
3. If a parent does not give consent, CDW shall make reasonable efforts to ensure that the parent:
  - a. Is fully aware of the nature of the evaluation and assessment of the child that would be available; and
  - b. Understands that the child will not be able to receive the evaluation or assessment unless consent is given.
4. CDW may not use the due process hearing procedures to challenge a parent's refusal to provide consent for evaluation and assessment.
5. Prior written notice shall be provided to parents a reasonable time before CDW proposes, or refuses, to initiate the evaluation of their child
6. The notice shall be in sufficient detail to inform parents about the action that is being proposed or refused, the reasons for taking the action, and all procedural safeguards that are available; including:
  - a. A description of mediation;
  - b. How to file a written complaint;
  - c. How to file a due process complaint; and
  - d. Any timelines under those procedures.

7. The notice shall be written in a language understandable to the general public and provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.
8. If the native language or other mode of communication of the parent is not a written language, the EI provider shall take steps to ensure that:
  - a. The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;
  - b. The parent understands the notice; and
  - c. There is written evidence that these requirements have been met.

### **C. Evaluation of the Child:**

1. Each child under the age of three (3) who is referred for evaluation and suspected of having a disability receives:
  - a. A timely, comprehensive, multidisciplinary evaluation, unless eligibility is established based on medical and other records.
2. An evaluation for a child shall include:
  - a. Administering an appropriate evaluation instrument;
  - b. Collecting the child's history (including interviewing the parent);
  - c. Identifying the child's level of functioning in each of the developmental areas:
    - i. Cognitive development;
    - ii. Physical development, including health, hearing, and vision;
    - iii. Communication development;
    - iv. Social or emotional development; and
    - v. Adaptive development.
  - d. Gathering information to understand the full scope of the child's unique strengths and needs from other sources such as:
    - i. Family members;
    - ii. Other care-givers;
    - iii. Medical providers;
    - iv. Social workers; and
    - v. Educators.
    - vi. Reviewing medical, educational, or other records.
3. In conducting an evaluation, no single procedure may be used as the sole criterion for determining a child's eligibility.
4. 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 constitutes a developmental delay or that a child has a diagnosed condition that may result in a developmental delay. A child and family assessment is required for IFSP development.
5. A written informed clinical opinion may be used as the basis to establish a child's eligibility, even when other instruments do not support eligibility. Eligibility established through a written informed clinical opinion shall be determined by at least two professionals representing different disciplines who have knowledge and expertise in the areas of concern.
6. In no event may written informed clinical opinion be used to reverse or negate the results of evaluation instruments that have established a child's eligibility.
7. Families will receive a family assessment for children determined eligible.

### **D. Procedures for Assessment of the Child and Family**

1. A multidisciplinary assessment of each child shall be conducted by qualified personnel to identify appropriate EI services to meet his or her unique strengths and needs and the early intervention services appropriate to meet those needs.
2. The assessment of the child shall include the following:
  - a. A review of the results of the evaluation conducted to determine eligibility;
  - b. Personal observations of the child; and
  - c. The identification of the child's needs in each of the developmental areas:

- i. Cognitive development;
    - ii. Physical development, including health, hearing and vision;
    - iii. Communication development;
    - iv. Social or emotional development; and
    - v. Adaptive development.
3. A family-directed assessment tool shall be used by qualified personnel in order to identify the family's resources, priorities, and concerns; and the supports and services necessary to enhance the family's capacity to meet the developmental needs of the child.
4. The family-directed assessment shall:
  - a. Be voluntary on the part of each family member participating in the assessment;
  - b. Be based on information obtained through an assessment tool and an interview with those family members who elect to participate in the assessment; and
  - c. Include the family's description of its resources, priorities, and concerns related to enhancing the child's development.
5. The assessments of the child and family may occur simultaneously with the evaluation, provided the requirements for the evaluations and assessments are met.
6. All evaluations and assessments of the child and family shall be conducted in a nondiscriminatory manner, and selected and administered not to be racially or culturally discriminatory.
7. All evaluations and assessments of a child and family assessments shall be conducted in the native language of the family members being assessed unless clearly not feasible to do so.
  - a. The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, or
  - b. The language normally used by the child, if determined developmentally appropriate for the child by qualified personnel conducting the evaluation or assessment.
8. 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).

## **V Authority:**

34 CFR §303.24 *Multidisciplinary*

34 CFR §303.321 *Evaluation of the child and assessment of the child and family;*

34 CFR §303.340 *Individualized family service plan – general;*

34 CFR §303.400 *General responsibility of lead agency for procedural safeguards;*

34 CFR §303.420 *Parental consent and ability to decline services; and*

34 CFR §303.421 *Prior written notice and procedural safeguards notice.*

## ATTACHMENT 1

### **1. ESTABLISHED CONDITIONS**

An established condition is one with a high probability of developmental delay including, but not limited to, the following examples:

#### A. CHROMOSOMAL DISORDERS

Such as Down Syndrome, Trisomy 18, Trisomy 13 and chromosomal deletions and duplications.

#### B. GENETIC DISORDERS

Neuromuscular disorders such as Muscular Dystrophy, Myotonic Dystrophy and Spinal Muscular Atrophy (Werdnig-Hoffman).

Inborn errors of metabolism such as Phenylketonuria, Galactosemia, Thalassemia, Tay Sachs and Gaucher disease.

#### C. SEVERE INFECTIOUS DISEASES

Prenatally acquired-Such as Toxoplasmosis, Cytomegalovirus, Rubella and Syphilis.

Perinatally acquired-Such as Varicella and Human Immunodeficiency Virus.

Postnatally acquired-Such as Meningitis and Encephalitis.

#### D. NEUROLOGIC DISORDERS

Perinatal conditions with a known risk of leading to developmental and neurological impairment such as Cerebral Palsy, Epilepsy, Degenerative Encephalopathies, Grade III or IV Intraventricular Hemorrhage, Asphyxia.

#### E. CONGENITAL ANOMALIES

Major anomalies such as Spinal Bifida, Hydrocephalus, Cleft Palate, Omphalocele, limb deficiencies and complex cardiac anomalies.

#### F. SENSORY DISORDERS

Diagnosed hearing loss of any type or degree with the exception of mild to moderate transient conductive hearing loss, secondary to middle ear effusion. Moderate to severe visual impairment.

#### G. SEVERE ADJUSTMENT, SOCIO-AFFECTIVE AND OTHER ATYPICAL DISORDERS

Such as autism spectrum disorders and psychiatric disorders.

#### H. EFFECTS OF TOXIC EXPOSURE

Effect on child from prenatal exposure to substances such as alcohol, illicit drugs, narcotics or prescription drugs (such as phenytoin or Coumadin).

Elevated blood levels requiring chelation.

**I. MEDICALLY FRAGILE**

Such as technology dependent children.

**J. CHRONIC MEDICAL ILLNESS**

Disorders such as malignancy, Cystic Fibrosis and chronic disorders of various organ systems. Broncho-pulmonary dysplasia (BPD) with home oxygen therapy required.

**K. LOW BIRTH WEIGHT/SMALL FOR GESTATIONAL AGE**

Birth weight less than 1000 grams.

**L. SEVERE PROTEIN - CALORIE MALNUTRITION**