



Evaluation Requirements – Part B Eligibility

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Evaluation Requirements – Part B Eligibility

Purpose

Before the initial provision of special education and related services to a student with a disability, each public agency must conduct a full and individual initial evaluation and determine the student’s eligibility. Public agency as defined by 34 CFR §300.33 of *Individuals with Disabilities Education Act* (IDEA) includes the state educational agency (SEA), local educational agency (LEA), educational service agencies (ESA), nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivision of the State that are responsible for providing education to children with disabilities. In Michigan, ESAs are referred to as intermediate school districts (ISDs). The purpose of this document is to provide guidance for district and ISD personnel as they evaluate and identify students for special education and related services in accordance with the *Individuals with Disabilities Education Act* (IDEA) and the Michigan Administrative Rules for Special Education (MARSE).

Prior Notice

When a request for an initial evaluation is received, the district must provide notice to the parents within 10 school days R 340.1721. The notice must be consistent with 34 CFR §300.503 and include:

- A description of the action proposed or refused by the district.
- An explanation of why the district proposes or refuses to take the action.
- A description of each evaluation procedure, assessment, record, or report the district used as basis for the proposed or refused action.
- A statement that the parents of a child with a disability have protection under the procedural safeguards of this part.
- Sources for parents to contact to obtain assistance in understanding the provisions of the IDEA (e.g., Michigan Alliance for Families Services, intermediate school district representative, and local supervisor or director).
- A description of other options that the IEP Team considered and the reasons why those options were rejected.

- A description of other factors that are relevant to the district’s proposal or refusal.

The notice will describe the decision of the district to evaluate or not and the information used to make that decision. It will describe any evaluation the district proposes to conduct and why it’s proposed. The notice must be written in language understandable to the public and in the native language of the parent unless it’s not feasible to do so. The Michigan Department of Education (MDE) Office of Special Education (OSE) provides additional guidance regarding notice requirements in the document, [Guidance for Notice](#).

Parental Consent

When the district determines an initial evaluation is needed, the district must make reasonable efforts to obtain informed consent from the parent for an initial evaluation to determine whether the student is a student with a disability in accordance with 34 CFR §300.300. Reasonable efforts include multiple attempts to obtain consent by various modes which may include telephone calls, visits to the parent’s home and correspondence in the parent’s native language. When the parent provides no response to multiple attempts to obtain written consent for evaluation or denies consent, the district will provide notice that an evaluation will not be conducted due to lack of parental consent. When a district receives consent to evaluate a student, that consent must not be construed as consent for the provision of special education services.

Initial Evaluations

To determine eligibility for special education program and services, the multidisciplinary evaluation team must conduct a full and individual initial evaluation and develop an evaluation report. 34 CFR §300.301 and R 340.1721a. In Michigan, the timeline from the receipt of parental consent for initial evaluation to the completion of an IEP and offer of FAPE is not to exceed 30 school days. This timeline may be extended if agreed upon by the district and the parent. The agreement must be in writing and the extension must be measured in school days. R 340.1721b.

The initial evaluation must be comprehensive enough to determine if the student is a student with a disability and to determine the educational needs of the student.

Review of Existing Evaluation Data (REED)

As part of an initial evaluation, if appropriate, and as part of any reevaluation a district must conduct a REED according to 34 CFR §300.305. A REED is not required for an initial evaluation but may be conducted when a district determines it appropriate to do so.

The REED is a process and does not have to be a meeting. As part of the REED process, members of the IEP Team and other qualified professionals review existing data about the student including:

- Evaluations and information provided by the parents of the child,
- Current classroom-based, local, or state assessments, and classroom-based observations, and
- Observations by teachers and related service providers.

Based on that review and input from the student's parents, the IEP Team will identify what, if any, additional data are needed to determine the following:

- a. Whether the student is a student with a disability and their educational needs for an initial evaluation. For a re-evaluation, the IEP Team will identify what, if any, additional data are necessary to determine whether the student continues to have a disability and their educational needs.
- b. The present levels of academic achievement and related developmental needs.
- c. Whether the student needs or continues to need special education services.
- d. Whether additions of modifications to the special education and related services are needed.

In many instances, the REED results in the development of an evaluation plan that, after obtaining parent consent, will be used to conduct evaluations and gather data that will be used to make a recommendation of eligibility. When the REED team determines no additional information or evaluation is needed in order to make an eligibility recommendation, the district must notify parents of that determination, by providing notice of sufficient data, which includes the reasons, and the right of the parent to request an assessment.

Evaluation Procedures

The evaluation shall consider all suspected areas of disability. In conducting the evaluation, the district must ensure the following consistent with 34 CFR §300.304.

- The district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent that will assist in determining:
 - whether the student is a student with a disability and
 - the content of the student’s IEP including information related to enabling the student to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities).
- The district may not use any single measure or assessment as the sole criterion for determining whether a student is a student with a disability and for determining an appropriate education program for the student.
- The district must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

Michigan Department of Education (MDE) Office of Special Education (OSE) does not maintain a list of approved instruments; members of the multidisciplinary evaluation team (MET) must rely on professional judgement and industry standards when selecting evaluation instruments. A multidisciplinary evaluation team means a minimum of 2 persons who are responsible for evaluating a student suspected of having a disability. The team shall include at least 1 special education teacher or other specialist who has knowledge of the suspected disability. R 340.1701b The multidisciplinary evaluation team must complete a full and individual evaluation and make an eligibility recommendation that includes a written report. The report must include information needed by the IEP Team to determine all of the following:

- Eligibility
- A student’s present level of academic achievement and functional performance

- Educational needs of the student

Additionally in accordance with 34 CFR §300.304(c), each district must ensure assessments and other evaluation materials are:

- Selected and administered so as not to be discriminatory on a racial or cultural basis.
- Provided and administered in the student's native language or other mode of communication and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer.
- Used for the purposes for which the assessments or measures are valid and reliable.
- Administered by trained and knowledgeable personnel. (See Table 1 for required evaluators) and
- Administered in accordance with any instructions provided by the producer of the assessments.

Assessments and other evaluation materials include those tailored to assess specific areas of educational need. The district cannot rely solely on an assessment which provides a general intelligence quotient. Assessments must be selected and administered so as best to ensure that if an assessment is administered to a student with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure. The student must be assessed in all areas related to the suspected disability.

The multidisciplinary evaluation team must carefully consider all eligibility categories for which the student may be eligible for special education and related services when making their evaluation plan. The initial evaluation for students who will be 16 years or older when the IEP will be in effect must include age-appropriate transition assessments. The evaluation must be sufficiently comprehensive to identify of all the student's special education and related service needs, even those not commonly linked to the eligibility category. Assessment tools and strategies must provide relevant information to assist persons in determining the educational needs of the child.

MDE OSE provides sample evaluation procedures at [Evaluation-Procedure](#) which districts are encouraged to adapt to their own circumstances. Table 1 provides a short description of Michigan’s eligibility categories and the required personnel to determine the presence of each disability.

Identifying Students with Specific Learning Disabilities (SLD)

The IDEA contains additional regulations for identifying students with SLD and the necessary documentation in 34 CFR §§300.308 through 300.311. The IEP Team may determine a student has an SLD if the student:

- Does not achieve adequately for their age or to meet grade level standards when provided with learning experiences and appropriate instruction
- Does not make sufficient progress to meet age or grade-level standards when using a process based on the student’s response to scientific, research-based interventions; or
- Exhibits a pattern of strengths and weaknesses.

The determination of an SLD may be in any of the following areas listed in 34 CFR §§300.309(a)(1):

- Oral expression
- Listening comprehension
- Written expression
- Basic reading skill
- Reading fluency skills
- Reading comprehension
- Mathematics calculation or
- Mathematics problem solving

When determining a student has an SLD the IEP Team must rule out several categories as the primary cause of the disability (e.g. hearing disability or cultural factors). See 34 CFR §300.309(a)(3) for a complete list. The group must also consider data which demonstrates the student was provided with appropriate instruction by qualified

personnel and the student was repeatedly assessed for progress. See 34 CFR §300.309(b) for specific information.

When determining the presence of a learning disability the district must observe the student in their learning environment in the areas of difficulty. The observation must document the student's academic performance and behavior. The observations may draw from information prior to the student's referral for an evaluation or be conducted after the parent's consent to an evaluation. Visit [Michigan Criteria for Determining the Existence of a Specific Learning Disability](#) for Michigan's criteria for determining the presence of an SLD.

Independent Educational Evaluation

When a parent disagrees with an evaluation conducted by the district, the parent has a right to an independent educational evaluation (IEE) at public expense. These procedures can be found in the IDEA at 34 CFR §300.502. Upon request for an IEE, the district must provide the parent with information where to obtain an IEE and agency criteria as written in 34 CFR §300.502(e). The district then has the option of filing a due process complaint if it disagrees with the request or providing an IEE. When the parent obtains an IEE at public expense or shares with the district an evaluation obtained at private expense, the results of the evaluation:

- Must be considered by the district, if the IEE meets the district's criteria, in any decision made with respect to the provision of a free appropriate public education (FAPE) to the student; and
- May be presented by any party as evidence at a hearing on a due process complaint.

When the hearing officer determines the evaluation conducted by the district is appropriate, the parent still has the right to an IEE, but not at public expense. The district shall disclose to the parent, before evaluation, whether the examiner who was contracted to provide the IEE provides services to the district that are in addition to the IEE. An IEE shall not be conducted by an examiner who otherwise or regularly contracts services, unless the examiner is agreeable to the parent. When a hearing officer requests an independent educational evaluation as part of a hearing on a due process complaint, then the cost must be at public expense.

Dual Eligibility under § 504 and the IDEA

The *Rehabilitation Act* of 1973 is a federal civil rights law which was created to stop discrimination against individuals with disabilities. In a school setting, section 504 of the *Rehabilitation Act* ensures eligible students with disabilities have equal access to education through the development of a section 504 plan. Some students with a disability who do not require specially designed instruction through an IEP may receive accommodations and supports through a section 504 plan.

When a student is eligible for services under both the IDEA and Section 504, a district does not have to develop an IEP and a Section 504 plan. When a student is eligible under IDEA, the student must have an IEP. Any accommodation which would have been provided through a 504 plan will be included in the IEP. Under the Section 504 regulations, one way to meet Section 504 requirements for FAPE is to implement an IEP. 34 CFR §104.33.

Eligibility Category

Eligibility Category Being Considered	Description	Required Evaluators
Cognitive Impairment R 340.1705	<ul style="list-style-type: none"> Lack of development primarily in the cognitive domain Impairment of adaptive behavior Adversely affects educational performance 	Psychologist*
Emotional Impairment R 340.1706	<ul style="list-style-type: none"> Manifestation of behavioral problems primarily in the affective domain for an extended period of time Adversely affects educational performance 	<ul style="list-style-type: none"> Psychologist or psychiatrist School social worker
Deaf or Hard of Hearing R 340.1707	<ul style="list-style-type: none"> Hearing loss that is so severe that the student is impaired in processing linguistic information with or without amplification Hard of hearing refers to a 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 	<ul style="list-style-type: none"> Audiologist Otolaryngologist or otologist

Visual Impairment R 340.1708	<ul style="list-style-type: none"> • A visual impairment, even with correction • Includes partial sight, blindness and progressively deteriorating eye condition. 	<ul style="list-style-type: none"> • Ophthalmologist or optometrist • Teacher of students with visual impairment • A certified orientation and mobility specialist (under conditions defined in R 340.7108)
Physical Impairment R 340.1709	<ul style="list-style-type: none"> • Severe orthopedic impairment • Adversely affects educational performance 	Orthopedic surgeon, internist, neurologist, pediatrician, family physician, or any approved physician*
Other Health Impairment R 340.1709a	<ul style="list-style-type: none"> • Limited strength, vitality, or alertness, including heightened alertness • Adversely affects educational performance 	Orthopedic surgeon, internist, neurologist, pediatrician, family physician, or any approved physician
Speech and Language Impairment R 340.1710	<ul style="list-style-type: none"> • Communication disorder • Manifestation of 1 or more of the following that adversely affects educational performance: <ul style="list-style-type: none"> ○ Language Impairment ○ Articulation Impairment ○ Fluency Impairment ○ Voice Impairment 	Teacher of students with a speech and language impairment or a speech and language pathologist
Early Childhood Developmental Delay R 340.1711	<ul style="list-style-type: none"> • Child through 7 years of age whose primary delay cannot be differentiated through existing criteria with R 340.1705 to R 340.1713 to R 340.1716 • Manifests a delay in 1 or more areas of development equal to or greater than ½ of the expected development 	Evaluators are determined by a team
Specific Learning Disability R 340.1713	Disorder in 1 or more basic psychological processes involved in the understanding or use of language or to do mathematical calculations	<ul style="list-style-type: none"> • Student's general education teacher (or a teacher qualified to teach student's age) • Person qualified to conduct individual diagnostic exams, such as a school psychologist, authorized provider of speech and language, or a teacher consultant
Severe Multiple Impairments R 340.1714	<ul style="list-style-type: none"> • 2 to 3 standard deviations below the mean and 2 or more of the following: <ul style="list-style-type: none"> ○ Hearing impairment ○ Visual impairment ○ Physical impairment ○ Health impairment • 3 or more standard deviations below the mean or students 	<ul style="list-style-type: none"> • Psychologist* • Depending upon the disabilities in the physical domain, evaluations required in R 340.1707, R 340.1708, R 340.1709, R 340.1709a, or R 340.1716

	<p>for whom evaluation instruments do not provide a valid measure of cognitive ability and 1 or more of the following:</p> <ul style="list-style-type: none"> ○ Hearing impairment ○ Visual impairment ○ Physical impairment ○ Health impairment 	
<p>Autism Spectrum Disorder R 340.1715</p>	<ul style="list-style-type: none"> ● Lifelong development disorder ● Adversely affects educational performance 1 or more of the following: <ul style="list-style-type: none"> ○ Academic ○ Behavioral ○ Social 	<ul style="list-style-type: none"> ● Psychologist* or psychiatrist, ● Authorized provider of speech and language ● School social worker
<p>Traumatic Brain Injury R 340.1716</p>	<ul style="list-style-type: none"> ● Brain injury (not congenital, degenerative or brain injuries induced by birth trauma) which results in total or partial functional disability or psychosocial impairment or both ● Adversely affects educational performance 	<p>Assessment from family physician or any approved physician*</p>
<p>Deaf-blindness R 340.1717</p>	<ul style="list-style-type: none"> ● Concomitant hearing impairment and visual impairment ● Severe communication and other developmental and educational needs 	<ul style="list-style-type: none"> ● Ophthalmologist, optometrist, audiologist, otolaryngologist, otologist, family physician or other approved physician* ● Teacher of students with visual impairment ● Teacher of students with hearing impairment

*Please see Required Evaluators Defined

Required Evaluators Defined

A psychologist means an approved Michigan school psychologist who is verified by the department or who is a fully licensed psychologist.

A physician as defined in 1978 PA 368, MCL 333.1101 et seq. means an individual who is licensed or authorized under this article to engage in the practice of osteopathic medicine or surgery. This individual may be a physician’s assistant. A nurse practitioner does not meet this requirement. The physician is part of the multidisciplinary evaluation team recommending eligibility. Their requirement is met by providing the physician’s

statement that supports or opposes an eligibility recommendation. These individuals are not expected to attend meetings nor serve in any other capacity unless the parent or district identify that individual as knowledgeable or with special expertise of the child.