

IFSP Tutorial: Evaluation & Assessment

Legal Requirements for Evaluation and Assessment

Outcome and Objectives

Outcome

Describe the federal and state regulations implementing IDEA Part C related to evaluation and assessment.

Objective

- Explain requirements for assisting families to identify their concerns, priorities and resources;
- Explain requirements for conducting a multidisciplinary evaluation and assessment to determine a child's eligibility for Part C early intervention; and
- Explain requirements for completing an ongoing assessment of a child's strengths and needs

Summary of Activities

Activities	Time Allotment
Overview of the Scope of Laws and Regulations addressing early intervention	1 hr
Read Essential Content regarding what providers and families need to know about evaluation and assessment	1-2 hrs
Application/Reflection questions	1 -1 ½ hrs
Recommended Reading	1 hour

Why this topic was selected

Session 1, **Legal requirements for Evaluation and Assessment**, focuses on the federal and state laws and regulations that address the evaluation and assessment process for early intervention services under Part C of the *Individuals with Disabilities Education Act (IDEA)*. It is important to understand these federal and state law and regulations because they:

- Impact day-to-day practices in early intervention evaluation and assessment; and
- Provide essential guidance about the legal framework for Part C early intervention services in general

Influence on early intervention practice

Part C legal requirements and regulations affect daily early intervention services and practices in both dramatic and subtle ways. With regards to evaluation and assessment for early intervention services, these legal requirements set the parameters for such critical issues as:

- The definition of early intervention services;
- Who qualifies for early intervention services;
- How to determine a child’s eligibility for services;
- Who is qualified to conduct early intervention evaluations and assessments;
- The family’s role in evaluation and assessment;
- Required components of an evaluation and assessment for each child and family; and
- Timelines for determining eligibility for services.

Understanding the basic provisions in federal/state laws and regulations aids both providers and families in sharing correct information, and helps interested parties avoid misinterpretation of the issues identified above. A shared understanding of the laws and regulations among consumers, providers, and policy makers can help to ensure timely and appropriate delivery of services.

Provides a framework for early intervention services

Why is it important to know what’s in federal and state laws and regulations? The first reason is that these legal requirements, summarized in Table 1, provide a framework for the early intervention services that are intended to support families to achieve their desired outcomes for their young children with developmental delay. The United State Congress first passed Part C of the *Individuals with Disabilities Education Act* (IDEA) in 1986 to provide infants and toddlers with disabilities, and their families, with a comprehensive, coordinated, statewide interagency system of quality early intervention services. The IDEA and the accompanying Code of Federal Regulations (CFR) reflect the influence of the political, social, health, and education trends of the 1960s, 70s and 80s which culminated in the development of a national public policy, codified in law as the IDEA (Meisels & Shonkoff, 2000).

Table 1. Federal/State law and regulations addressing early intervention

	Federal	State
Law	<i>Individuals with Disabilities Education Act</i> , 1986 20 U.S.C. § 1400 et seq. (Amended 1991; 1997)	<i>Education Article, Section 8-416</i> Annotated Code of Maryland
Regulations	<i>Early Intervention Program for Infants and Toddlers with Disabilities</i> , 1993 34 C.F.R. Part 303 (Amended 1998; 1999)	<i>Early Intervention Services for Eligible Infants and Toddlers and their Families</i> (COMAR 13A.13.01)

Each state, in order to assure receipt of federal funds for early intervention services, is obligated to incorporate the basic Part C provisions of the *Individuals with Disabilities Education Act* in their state law and regulations. In support of the IDEA, regulations were issued in Maryland to implement the Infants and Toddlers Program in 24 local jurisdictions (link to http://cte.jhu.edu/dse_eis/directory1.cfm?dirID=2&location=2).

The purpose of the Maryland state regulations is to:

- A. Set forth definitions;
- B. Implement a comprehensive, coordinated, statewide interagency system of early intervention services;
- C. Clarify local lead agency responsibilities;
- D. Codify the State Interagency Coordinating Council;
- E. Maximize funding sources;
- F. Enhance the capacity of families to meet the needs of their children; and
- G. Assure that the system is in effect not later than July 1, 1991 [COMAR 13A.13.01.01].

Maryland has one statewide early intervention program that is administered in 24 local jurisdictions. Eligibility criteria are the same throughout the state. Day-to-day operation of the early intervention program in each jurisdiction, however, may not be identical due to factors such as population, number of children served, and partnerships with other community agencies serving families with very young children who have special needs.

Overview of the scope of laws and regulations addressing early intervention

A note about laws and regulations

Laws are passed, or enacted, either by a state legislature or the United States Congress. After a state or federal law is passed, the resultant regulations are published, or promulgated, to clarify the intent of each section of the law. Both state and federal regulations carry the weight of the law, and must be followed. Federal regulations provide minimum standards for state programs to follow. State agencies, such as the Maryland Department of Education, issue regulations to define how state and federal laws will be implemented, and may add regulations, as long as they do not conflict with federal regulations. Thus, it is important to understand both the federal and state regulations when discussing a particular program like early intervention.

The early intervention regulations accompanying the *Individuals with Disabilities Education Act* are written, and updated periodically, by the U.S. Department of Education. They are published in the Federal Register as 34 CFR Part 303, Early Intervention Program for Infants and Toddlers with Disabilities. Maryland State Department of Education regulations incorporate the federal early intervention regulations, and are compiled in the Code of Maryland Regulations (COMAR). COMAR contains 33 Titles, with each Title corresponding to a department or agency; COMAR Title 13A.13.01 addresses the Maryland Infants and Toddlers program.

Directions for reading the Overview of the Federal/State Laws and Regulations

1. Review, online, the federal laws and regulations, and Maryland regulations related to the Part C early intervention program:

Printable copies of the federal/state laws and regulations are available:

IDEA and Federal Regulations, with search enhanced functions and printable format (Link to www.ideapractices.org/law/regulations/indexPartC.php)

Maryland State Regulations: (Link to http://www.dsd.state.md.us/comar/subtitle_chapters/13a_Chapters.htm#Subtitle13)

*Please note - COMAR links are ever changing without warning. Our recommendation is to search the Internet for Division of State Documents.

(**Note:** Click on “early intervention” to access the 13 sections of the Maryland regulations addressing early intervention; each section must be opened individually)

2. Pay specific attention to the:

Range of topics covered. Look over all section headings of the law and regulations to survey the scope of early intervention provisions:

Federal law, (<http://www.ideapractices.org/law/index.php>) scroll down to Part C

Federal regulations (<http://www.ideapractices.org/law/regulations/indexPartC.php>)

Maryland State regulations
http://www.dsd.state.md.us/comar/subtitle_chapters/13a_Chapters.htm#Subtitle13

*Please note - COMAR links are ever changing without warning. Our recommendation is to search the Internet for Division of State Documents.

Purpose and intent. Read the following sections of the law and regulations and reflect on how the stated purpose and intent compares with your personal and professional interests:

- Federal law: Section 631 in the IDEA (Findings and Policy); (www.ideapractices.org/law/law/index.php)
- Federal regulations: Part 303, Section 303.1 in the IDEA regulations (Purpose for early intervention program); (www.ideapractices.org/law/regulations/indexPartC.php)

- Maryland State Regulations: Section.01 (Purpose for early intervention services) in the regulations for Maryland Infants and Toddlers Program.
http://www.dsd.state.md.us/comar/subtitle_chapters/13a_Chapters.htm#Subtitle13
*Please note - COMAR links are ever changing without warning. Our recommendation is to search the Internet for Division of State Documents.

Requirements for evaluation and assessment, particularly definitions and specific provisions:

- Federal Regulations (34 CFR Section 303.322)
(www.idea.practices.org/law/regulations/indexPartC.php)
- State regulations [COMAR 13A.13.01.06].
http://www.dsd.state.md.us/comar/subtitle_chapters/13a_Chapters.htm#Subtitle13
*Please note - COMAR links are ever changing without warning. Our recommendation is to search the Internet for Division of State Documents.

Essential Content of Legal Requirement

Federal and state regulations for early intervention evaluation and assessment

Read the following questions and excerpts from federal and state regulations, then answer the reflection questions in the next section, Application/Reflection. Links are provided within the content to the related provisions of the law and regulations identified in the content provided with each question.

- a. Who is eligible for early intervention services?
- b. How is a child's eligibility for early intervention services determined?
- c. What are early intervention services?
- d. What is the role of service providers?
- e. What are the requirements for assisting families to identify their priorities, resources and concerns?
- f. What is informed consent and what is needed from families for evaluation and assessment?
- g. What is an evaluation for eligibility?
- h. What is an ongoing assessment of a child's strengths and needs?
- i. What are the timelines for completing an evaluation and assessment?
- j. What must evaluation and assessment include?
- k. Who can conduct and participate in evaluation and assessment?
- l. What is a non-discriminatory evaluation and assessment?
- m. What is a multidisciplinary evaluation and assessment?

a. Who is eligible for early intervention services?

Infants and toddlers with disabilities

Definitions, Federal Regulations [Sec.303.16]

[Summary - The federal definition provides two ways for an infant or toddler to meet the criteria for early intervention services, and allows states to include children at risk. Regulatory Note 1 gives examples, and regulatory Note 2 discusses children at risk for developmental delay.]

(a) As used in this part, infants and toddlers with disabilities means individuals from birth through age two who need early intervention services because they--

(1) Are experiencing developmental delays, 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) Have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay. (Link to Legal Requirements, Appendix B)

(b) The term infants and toddlers with disabilities may also include, at a state's discretion, children from birth through age two who are at risk of having substantial developmental delays if early intervention services are not provided.

Note 1: The phrase “a diagnosed physical or mental condition that has a high probability of resulting in developmental delay,” as used in paragraph (a)(2) of this section, applies to a condition if it typically results in developmental delay. Examples of these conditions include chromosomal abnormalities; genetic or congenital disorders; severe sensory impairments, including hearing and vision; inborn errors of metabolism; disorders reflecting disturbance of the development of the nervous system; congenital infections; disorders secondary to exposure to toxic substances, including fetal alcohol syndrome; and severe attachment disorders.

Note 2: With respect to paragraph (b) of this section, children who are at risk may be eligible under this part if a State elects to extend services to that population, even though they have not been identified as disabled. Under this provision, States have the authority to define who would be “at risk” of having substantial developmental delays if early intervention services are not provided." In defining the “at risk” population, States may include well-known biological and environmental factors that can be identified and that place infants and toddlers “at risk” for developmental delay. Commonly cited factors include low birth weight, respiratory distress as a newborn, lack of oxygen, brain hemorrhage, infection, nutritional deprivation, and a history of abuse or neglect. It should be noted that “at risk” factors do not predict the presence of a barrier to development, but they may indicate children who are at higher risk of developmental delay than children without these problems

Definitions, Maryland Regulations [COMAR 13A.13.01.02.B]

[Summary - The Maryland definition provides three categories for eligibility.]

(21) Infants and toddlers with disabilities means children from birth through 2 years old who are eligible for early intervention services, as documented by appropriate qualified personnel, because they:

- (a) Are experiencing at least a 25 percent delay, as measured and verified by appropriate diagnostic instruments and procedures, in one or more of the following developmental areas:
 - (i) Cognitive development;
 - (ii) Physical development, including vision and hearing;
 - (iii) Communication development;
 - (iv) Social or emotional development;
 - (v) Adaptive development; or
- (b) Manifest atypical development or behavior, which is demonstrated by abnormal quality of performance and function in one or more of the above specified developmental areas, interferes with current development, and is likely to result in subsequent delay (even when diagnostic instruments or procedures do not document a 25 percent delay); or
- (c) Have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay, with examples of these conditions including chromosomal abnormalities, genetic or congenital disorders, severe sensory impairments, inborn errors of metabolism, disorders reflecting disturbance of the development of the nervous system, congenital infections, disorders secondary to exposure to toxic substances, including fetal alcohol syndrome, and severe attachment disorders.

b. How is a child's eligibility for early intervention services determined? State eligibility criteria and procedures?

State Eligibility Criteria, Federal Regulations [Sec. 303.300]

[Summary - I provision defines criteria and procedures to be used in determining a child's eligibility for early intervention services, including the use of informed clinical opinion.]

Each statewide system of early intervention services must include the eligibility criteria and procedures, consistent with Sec. 303.16 (see definition of infant and toddler with disability), to be used by the state in carrying out programs under this part of the law.

- (a) The State shall define developmental delay by--
 - (1) Describing, for each of five developmental areas (physical, communication, social/emotional, adaptive and cognitive), the procedures, including the use of informed clinical opinion, that will be used to measure a child's development; and

- (2) Stating the levels of functioning or other criteria that constitute a developmental delay in each of those areas.
- (b) The State shall describe the criteria and procedures, including the use of informed clinical opinion, that will be used to determine the existence of a condition that has a high probability of resulting in developmental delay under Sec. 303.16(a)(2) (see definition of infant and toddler with disability).
- (c) If the State elects to include in its system children who are at risk under Sec. 303.16(b) (see definition of infant and toddler with disability), the State shall describe the criteria and procedures, including the use of informed clinical opinion, that will be used to identify those children.

Note: Under this section and Sec. 303.322(c)(2) (using informed clinical opinion during evaluation and assessment), States are required to ensure that informed clinical opinion is used in determining a child's eligibility under this part. Informed clinical opinion is especially important if there are no standardized measures, or if the standardized procedures are not appropriate for a given age or developmental area. If a given standardized procedure is considered to be appropriate, a State's criteria could include percentiles or percentages of levels of functioning on standardized measures.

Evaluation/Assessment, Maryland Regulations [COMAR 13A.13.01.06]
Eligibility

[Summary - Maryland's regulations define "an infant and toddler with disabilities" and add the following requirements about how to determine eligibility.]

- A. Each local lead agency shall develop written policies and procedures consistent with the federal regulations (Sec.303.322, *evaluation and assessment*) to provide a timely, comprehensive, multidisciplinary evaluation....
- F. Eligibility Determination.
- (1) Qualified personnel (link to Essential Content, Session 1, question j) directly involved in the diagnosis of the child or in conducting the evaluation and assessment of the child shall determine the child's eligibility for early intervention services by comparing evaluation results with the Maryland criteria for infants and toddlers (Regulation .02 of this chapter)
- (2) A written statement shall document the eligibility decision and be included in the child's early intervention record. The written statement shall include:
- (a) The names and titles of the qualified personnel determining the child's eligibility;
- (b) The date of the determination; and
- (c) The basis for eligibility determination.

c. What are early intervention services?

Definitions, Federal Law [Sec.632 (4)]

[Summary - The federal law defines early intervention services and identifies what they include]

The term '**early intervention services**' means developmental services that:

- (A) are provided under public supervision;
 - (B) 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;
 - (C) are designed to meet the developmental needs of an infant or toddler with a disability in any one or more of the following areas –
 - (i) physical development;
 - (ii) cognitive development;
 - (iii) communication development;
 - (iv) social or emotional development; or
 - (v) adaptive development;
 - (D) meet the standards of the State in which they are provided, including the requirements of this part;
 - (E) include --
 - (i) family training, counseling, and home visits;
 - (ii) special instruction;
 - (iii) speech-language pathology and audiology services;
 - (iv) occupational therapy;
 - (v) physical therapy;
 - (vi) psychological services;
 - (vii) service coordination services;
 - (viii) medical services only for diagnostic or evaluation purposes;
 - (ix) early identification, screening, and assessment services;
 - (x) health services necessary to enable the infant or toddler to benefit from the other early intervention services;
 - (xi) social work services;
 - (xii) vision services;
 - (xiii) assistive technology devices and assistive technology services; and
 - (xiv) transportation and related costs that are necessary to enable an infant or toddler and the infant's or toddler's family to receive another service described in this paragraph;
- Appendix A lists the regulatory definitions for the early intervention services listed above (Link to Session 1 Appendix A, Definitions of Early Intervention Services)

Definitions, Federal Regulations [Sec.303.12]

[Summary - The federal regulations describe how to provide early intervention services, including natural environments.]

- (a) General. As used in this part, **early intervention services** means services that--
- (1) Are designed to meet the developmental needs of each child eligible under this part and the needs of the family related to enhancing the child's development;
 - (2) Are selected in collaboration with the parents;
 - (3) Are provided--
 - (i) Under public supervision;
 - (ii) By qualified personnel, as defined in Sec. 303.21 (*Public agency*), including the types of personnel listed in paragraph (e) of this section;
 - (iii) In conformity with an individualized family service plan; and
 - (iv) At no cost, unless, subject to Sec. 303.520(b)(3) (*Policies related to payment for services*) Federal or State law provides for a system of payments by families, including a schedule of sliding fees; and
 - (4) Meet the standards of the State, including the requirements of this part.
- (b) Natural environments. To the maximum extent appropriate to the needs of the child, early intervention services must be provided in natural environments, including the home and community settings in which children without disabilities participate.

Definitions, Maryland Regulation: COMAR [13A.13.01.02.B(4)]

[Summary - Maryland State regulations are consistent with federal regulations, and add a provision about public supervision.]

Early intervention services-

- (c) Provided:
- (i) Under public supervision (that is, federal, State, or local funds are used in connection with provision of services. This includes children receiving services through a program funded by public monies as well as children receiving services from a private provider, but whose services are supervised or paid for by a public agency),

d. What is the role of service providers?

Definitions, Federal Regulations [Sec.303.12]

[Summary - Federal regulations describe the kinds of services for which providers are responsible.]

(c) General role of service providers. To the extent appropriate, service providers [in each area of early intervention services included in Sec. 303.12 (d), *Types of services*] are responsible for-

- (1) Consulting with parents, other service providers, and representatives of appropriate community agencies to ensure the effective provision of services in that area;
- (2) Training parents and others regarding the provision of those services; and
- (3) Participating in the multidisciplinary team's assessment of a child and the child's family, and in the development of integrated goals and outcomes for the individualized family service plan.

Definitions, Maryland Regulations

[Summary - Maryland regulations add definitions of “qualified personnel” and “suitable qualifications” for Maryland early intervention service providers. (Link to Essential Content, Session 1 question k)]

e. What are the requirements for assisting families to identify their priorities, resources, and concerns?

Evaluation and assessment, Federal Regulations [Sec.303.322]

[Summary - Federal regulations describe a family-directed identification of family needs related to a child's development.]

(a)(1)Each system of early intervention must include.... a family-directed identification of the needs of each child's family to appropriately assist in the development of the child.

(d) Family assessment, Federal Regulations

(1) Family assessments under this part must be family-directed and designed to determine 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 the child.

(2) Any assessment that is conducted must be voluntary on the part of the family.

(3) If an assessment of the family is carried out, the assessment must--

- (i) Be conducted by personnel trained to utilize appropriate methods and procedures;

- (ii) Be based on information provided by the family through a personal interview; and
- (iii) Incorporate the family's description of its resources, priorities, and concerns related to enhancing the child's development.

Definitions, Maryland Regulations: COMAR [13A.13.01.02.B(4)]
Assessment of family priorities, resources & concerns

[Summary - Maryland regulations restate the federal definition of assessment.]

f. What is informed consent and what is needed from families for evaluation and assessment?

Procedural Safeguards, Federal Regulations [Sec. 303.401]
Parental consent

[Summary - Federal regulations specify when and how informed consent must be obtained from parents for evaluation and assessment.]

(a) Consent means that--

- (1) The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication;
- (2) The parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and
- (3) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time;

(c) Personally identifiable means that information includes-

- (1) The name of the child, the child's parent, or other family member;
- (2) The address of the child;
- (3) A personal identifier, such as the child's or parent's social security number; or
- (4) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

Written consent

Procedural safeguards, Federal regulations [Sec. 303.404]

(a) Written parental consent must be obtained before-

- (1) Conducting the initial evaluation and assessment of a child under Sec. 303.322; and

(2) Initiating the provision of early intervention services (see Sec. 303.342(e)).

(b) If consent is not given, the public agency shall make reasonable efforts to ensure that the parent-

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

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

(Authority: 20 U.S.C. 1439)

Note 1: In addition to the consent requirements in this section, other consent requirements are included in

(1) Sec. 303.460(a), regarding the exchange of personally identifiable information among agencies, and

(1) the confidentiality provisions in the regulations under Part B of the Act (34 CFR 300.571) and 34 CFR Part 99 (Family Educational Rights and Privacy), both of which apply to this part.

Note 2: Under Sec. 300.504(b) of the Part B regulations, a public agency may initiate procedures to challenge a parent's refusal to consent to the initial evaluation of the parent's child and, if successful, obtain the evaluation. This provision applies to eligible children under this part, since the Part B evaluation requirement applies to all children with disabilities in a State, including infants and toddlers.

Definitions, Maryland Regulations [COMAR 13A.13.01.02 B (22)]

Parental Consent

[Summary - Maryland regulations restate federal regulations.]

g. What is an evaluation for eligibility?

Evaluation and Assessment, Federal Regulations [Sec. 303.322]

[Summary - Federal regulations define an evaluation for a child's eligibility for early intervention services.]

(a) General

(1) Each system must include the performance of a timely, (Link to Essential Content, Session 1, question I) comprehensive, multidisciplinary evaluation (Link to Essential Content, Session 1, question m) of each child, birth through age two, referred for evaluation...

(2) The lead agency shall be responsible for ensuring that the requirements of this section are implemented by all affected public agencies and service providers in the State.

(b) Definitions of evaluation and assessment. As used in this part-

(3) Evaluation means the procedures used by appropriate qualified personnel (Link to Essential Content, Session 1, question k) to determine a child's initial and continuing eligibility under this part, consistent with the definition of “infants and toddlers with disabilities” in Sec. 303.16 (*see Maryland’s definition*), (link to Essential Content, Session 1 question a) including determining the status of the child in each of the following developmental areas:

- Cognitive
- Physical, including vision & hearing
- Communication
- Social/emotional
- Adaptive

Definitions, Maryland Regulations [COMAR 13A.13.01.02.B(17)]

[Summary - Maryland regulations restate federal regulations.]

h. What is an ongoing assessment of a child’s strengths and needs?

Evaluation & Assessment, Federal Regulations [Sec.303.322 (b)]

Definition of Assessment

Federal regulations define an assessment of a child’s development and need for services.

(2) Assessment means the ongoing procedures used by appropriate qualified personnel throughout the period of a child's eligibility under this part to identify—

- (i) The child's unique strengths and needs and the services appropriate to meet those needs; and
- (ii) The resources, priorities, and concerns of the family and the supports and services necessary to enhance the family's capacity to meet the developmental needs of their infant or toddler with a disability.

Definitions, Maryland Regulations [COMAR 13A.13.01.02.B (4)]

[Summary - Maryland regulations restate the federal regulations.]

i. What are the timelines for completing evaluation and assessment?

Evaluation & Assessment, Federal Regulations [Sec. 303.322 (e)]

Timelines

[Summary - Federal regulations define the timelines for completing a child's initial evaluation and assessment.]

- (1) Except as provided in paragraph (e)(2) of this section, the evaluation and initial assessment of each child (including the family assessment) must be completed within the 45-day time period required in Sec. 303.321(e) (*comprehensive child find procedures*).
- (2) The lead agency shall develop procedures to ensure that in the event of exceptional circumstances that make it impossible to complete the evaluation and assessment within 45 days (e.g., if a child is ill), public agencies will—
 - (i) Document those circumstances; and
 - (ii) Develop and implement an interim IFSP, to the extent appropriate and consistent with Sec. 303.345 (b)(1) and (b)(2) (refers to providing services before evaluation and assessment are completed).

Evaluation & Assessment, Maryland Regulations [COMAR 13A.13.01.06]

Timelines

[Summary - Maryland regulations are consistent with federal regulations and specify that it is the responsibility of the local lead agency to develop written policies for completing the initial evaluation and assessment.]

- A. Each local lead agency shall develop written policies and procedures consistent with the federal regulations (34 CFR §303.322, *evaluation and assessment*) to provide a timely, comprehensive, multidisciplinary evaluation of each child, birth through 2 years old, referred for evaluation, including assessment activities related to the child and the child's family within 45 days of receipt of referral, except as provided under the federal regulations (34 CFR §303.322 e, *exceptions to the 45 day timeline*).

j. What must the evaluation and assessment include?

Evaluation and Assessment, Federal Regulations [Sec. 303.322]

[Summary - Federal regulations describe what must be included in a child's initial evaluation and assessment.]

- (c) The evaluation and assessment of each child must...

(3) include the following:

- (i) A review of pertinent records related to the child's current health status and medical history.
- (ii) An evaluation of the child's level of functioning in each of the following developmental areas: cognitive; physical (including vision and hearing); communication; social or emotional; or adaptive development.
- (iii) An assessment of the unique needs of the child in terms of each of the developmental areas above, including the identification of services appropriate to meet those needs.

Evaluation & Assessment, Maryland Regulations [COMAR 13A.13.01.06.]

[Summary - Maryland regulations are consistent with federal regulations and clarify what must be included in the initial evaluation and assessment for eligibility for early intervention services.]

B. Written policies and procedures shall include requirements for a written report to be included in the early intervention record to document the results of evaluation and assessment conducted by qualified personnel to determine initial eligibility of each child referred for evaluation.

C. The written report shall include:

- (1) A statement of the child's current health status based on a review of pertinent records and medical history;
- (2) A statement which describes the child's levels of functioning in each developmental area and the dates of the evaluation and assessment procedures;
- (3) A statement of criteria, including tests, evaluation materials, and informed clinical opinion; and
- (4) The signatures and titles of the qualified personnel who conducted the evaluation and assessment.

k. Who can conduct and participate in the evaluation and assessment?

Evaluation & Assessment, Federal Regulations [Sec. 303.22]

[Summary Federal regulations require that evaluation and assessment be conducted by qualified personnel]

- c) Evaluation and assessment of the child. The evaluation and assessment of each child must--
- (4) Be conducted by personnel trained to utilize appropriate methods and procedures;

(2) Be based on informed clinical opinion ...

Definitions, Federal Regulations [Sec. 303.22]
Qualified Personnel

As used in this part, qualified means that a person has met State approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the person is providing early intervention services.

Note: These regulations contain the following provisions relating to a State's responsibility to ensure that personnel are qualified to provide early intervention services:

1. Section 303.12(a)(4) provides that early intervention services must meet State standards. This provision implements a requirement that is similar to a longstanding provision under part B of the Act (i.e., that the State educational agency establish standards and ensure that those standards are currently met for all programs providing special education and related services).
2. Section 303.12(a)(3)(ii) provides that early intervention services must be provided by qualified personnel.
3. Section 303.361(b) requires statewide systems to have policies and procedures relating to personnel standards.

Evaluation & Assessment, Maryland Regulations [COMAR 13A .13.01.06]

[Summary - Maryland regulations define qualified personnel and how they can attain suitable qualifications, and specify whom may participate in an evaluation.]

- D. Qualified personnel shall conduct a timely, comprehensive, multidisciplinary evaluation for a child, birth through 2 years old, referred for evaluation, in accordance with established local policies and procedures.
- E. Other persons who have the opportunity to participate in the multidisciplinary evaluation process may include the child's parent or parents, other family members, as appropriate, and the interim case manager

Definition of qualified personnel & suitable qualifications
Definitions, Maryland Regulations: COMAR 13A .13.01.02

(36) "Qualified personnel," means persons who have met State approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the personnel are providing early intervention services.

(44) "Suitable qualifications" for personnel providing early intervention services in excess of 15 percent of employment hours means a minimum of 120 contact hours in the following competency areas:

- (a) Infant and toddler development (typical and atypical);
- (b) Infant and toddler assessment (instruments and procedures);
- (c) Family assessment (identification of strengths/needs);
- (d) Family systems issues;
- (e) Early intervention service options and strategies;
- (f) Team process; and
- (g) Service coordination

I. What is a non-discriminatory evaluation and assessment?

Non-Discriminatory Procedures, Federal Regulations [Sec. 303.323]

[Summary - Federal regulations define the minimum standards for a nondiscriminatory evaluation and assessment, including using materials and procedures in the parent's native language.]

Each lead agency shall adopt nondiscriminatory evaluation and assessment procedures. The procedures must provide that public agencies responsible for the evaluation and assessment of children and families under this part shall ensure, at a minimum, that:

- (a) Tests and other evaluation materials and procedures are administered in the native language of the parents or other mode of communication, unless it is clearly not feasible to do so;
- (b) Any assessment and evaluation procedures and materials that are used are selected and administered so as not to be racially or culturally discriminatory;
- (c) No single procedure is used as the sole criterion for determining a child's eligibility under this part; and
- (d) Evaluations and assessments are conducted by qualified personnel. (Link to Essential Content, Session 1, question k)

Federal Regulations [Sec. 303.401]

Definition of Native language

- (e) Native language, where used with reference to persons of limited English proficiency, means the language or mode of communication normally used by the parent of a child eligible under this part;

Evaluation & assessment, Maryland Regulations: COMAR [13A.13.01.06]

Nondiscriminatory evaluation/assessment

[Summary - Maryland regulations are consistent with federal regulations and give responsibility to the local lead agency to develop and implement policies for nondiscriminatory evaluation and assessment, including giving parents written notice in their native language.]

G. Local lead agencies shall develop and implement written procedures to conduct nondiscriminatory evaluation and assessment of children and families, consistent with 34 CFR §303.323 (nondiscriminatory procedures).

Procedural safeguards, Maryland Regulations: COMAR [13A.13.01.11.A(4)]

(4) Prior Notice: Native Language

- (a) Written prior notice shall be given to the parents of an eligible child within a reasonable time period, as determined or agreed to by the parents, before a service provider proposes, or refuses, to initiate or change the identification, evaluation, or placement of a child, or the provision of appropriate early intervention services to the child and the child's family.
- (b) The notice shall be in sufficient detail to inform the parents about:
 - (i) The action that is being proposed or refused;
 - (ii) The reasons for taking the action; and
 - (iii) All procedural safeguards that are available under 34 CFR 303.
- (c) The notice shall be:
 - (i) Written in language understandable to the general public; and
 - (ii) Provided in the native language of the parents, unless it is clearly not feasible to do so.
- (d) If the native language or other mode of communication of the parent is not a written language, the local lead agency shall take steps to ensure that:
 - (i) The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;
 - (ii) The parent understands the notice; and
 - (iii) There is written evidence that the requirements of §A(4)(d)(i) and

(iv) of this regulation have been met.

- (e) If a parent is deaf, blind, or deaf-blind, or has no written language, the mode of communication shall be that normally used by the parent (for example, sign language, Braille, or oral communication).

m. What is a multidisciplinary evaluation and assessment?

Definitions, Federal Regulations [Sec. 303.17]

Multidisciplinary

[Summary - Federal regulations define what multidisciplinary means when conducting an evaluation and assessment.]

As used in this part, multidisciplinary means the involvement of two or more disciplines or professions in the provision of integrated and coordinated services, including evaluation and assessment activities and development of the IFSP

Definitions, Maryland Regulations: COMAR [13A.13.01.02.B(28)]

Multidisciplinary

[Summary - Maryland regulations restate the federal regulations]

Application & Reflection for Legal Requirements

Directions: In small groups, or individually, reflect on your early intervention practices and answer the following questions. You may find it helpful to refer to the actual regulations as well as the information presented in the essential content of Legal Requirements for Evaluation and Assessment.

1. How does Maryland's definition of an "infant and toddler with a disability" compare with the federal definition? Who is eligible for early intervention in Maryland?
2. Explain the difference between a law and a regulation. Give at least two examples of how the federal and state regulations lay the framework for how evaluation and assessment are to be conducted. (Link to Understanding federal and state laws)
3. What is the purpose of:
 - Assisting families to identify their priorities, resources and concerns?
 - An eligibility evaluation?
 - An ongoing assessment?
4. How do federal and state laws/regulations address assisting families to identify their priorities, resources, and concerns?
5. What do the federal and state laws/regulations say about who can conduct and participate in evaluation and assessment? How do families participate in your evaluations and assessments?
6. What are the timelines for completing a child's evaluation/assessment and assisting families to identify their priorities, concerns and resources? Are exceptions allowed? Under what circumstances?

Recommended Reading for Legal Requirements

The enactment of the Part C early intervention program of IDEA

- Meisels, S. & Shonkoff, J. (2000). Early childhood intervention: A continuing evolution. In J. Shonkoff and S. Meisels (eds), *Handbook of early childhood intervention*, pp. 3-34 (second edition). New York: Cambridge University Press.

This chapter explores the history of early childhood intervention in four parts: 1) the historical health and educational roots prior to 1960; 2) advances in practice since 1960; 3) provisions of the landmark Individuals with Disabilities Education Act that mandates comprehensive family-centered services for young children with developmental disabilities and delays, and their families; and 4) conceptual and programmatic challenges facing early intervention in the beginning of the 21st century.

Eligibility

- Harbin, G., Gallagher, J., & Terry, D. (1991). Defining the eligible population: policy issues and challenges. *Journal of Early Intervention*, 15(1), 13-20.
- Shackelford, J. (2002). State and jurisdictional eligibility definitions for infants and toddlers with disabilities under IDEA. (NECTAC Notes # 11). Chapel Hill: The University of North Carolina, FPG child Development Institute, National Early Childhood Technical Assistance Center. (Link to source: www.nectac.org/~pdfs/pubs/nnotes11.pdf)

This paper discusses how the 50 states and 6 jurisdictions participating in the Part C early intervention program define developmental delay, and at risk, as applicable, in their definition of eligibility for services.

- Shonkoff, J. & Meisels, S. (1991). Defining eligibility for services under Public law 99-457. *Journal of Early Intervention*, 15(1), 21-25.

Informed clinical opinion

- Shackelford, J. (2002). Informed clinical opinion. NECTAC Notes # 10). Chapel Hill: The University of North Carolina, FPG child Development Institute, National Early Childhood Technical Assistance Center. (Link to source: www.nectac.org/~pdfs/pubs/nnotes10.pdf)

This brief document clarifies “informed clinical opinion” by discussing its meaning in the context of Part C early intervention services, how it affects the determination of eligibility, and why it is necessary to document the sources and use by early intervention service providers.

Legal Requirements Appendix A

Regulatory Definition Document

Federal Regulations: Section 303.12 (d) of the definition “Early intervention services” in part C of the Individuals with disabilities education act

- (d) Types of services; definitions. Following are types of services included under "early intervention services," and, if appropriate, definitions of those services:
- (1) **Assistive technology** device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of children with disabilities. Assistive technology service means a service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. Assistive technology services include—
- (i) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;
 - (ii) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
 - (iii) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
 - (iv) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
 - (v) Training or technical assistance for a child with disabilities or, if appropriate, that child's family; and
 - (vi) Training or technical assistance for professionals (including individuals providing early intervention services) or other individuals who provide services to or are otherwise substantially involved in the major life functions of individuals with disabilities.
- (2) **Audiology** includes—
- (i) Identification of children with auditory impairment, using at risk criteria and appropriate audiologic screening techniques;
 - (ii) Determination of the range, nature, and degree of hearing loss and communication functions, by use of audiological evaluation procedures;

- (iii) Referral for medical and other services necessary for the habilitation or rehabilitation of children with auditory impairment;
 - (iv) Provision of auditory training, aural rehabilitation, speech reading and listening device orientation and training, and other services;
 - (v) Provision of services for prevention of hearing loss; and
 - (vi) Determination of the child's need for individual amplification, including selecting, fitting, and dispensing appropriate listening and vibrotactile devices, and evaluating the effectiveness of those devices.
- (3) **Family training, counseling, and home visits** means services provided, as appropriate, by social workers, psychologists, and other qualified personnel to assist the family of a child eligible under this part in understanding the special needs of the child and enhancing the child's development.
- (4) **Health services** (See Sec. 303.13).
- (5) **Medical services** only for diagnostic or evaluation purposes means services provided by a licensed physician to determine a child's developmental status and need for early intervention services.
- (6) **Nursing services** includes--
- (i) The assessment of health status for the purpose of providing nursing care, including the identification of patterns of human response to actual or potential health problems;
 - (ii) Provision of nursing care to prevent health problems, restore or improve functioning, and promote optimal health and development; and
 - (iii) Administration of medications, treatments, and regimens prescribed by a licensed physician.
- (7) **Nutrition services** includes—
- (i) Conducting individual assessments in--
 - (A) Nutritional history and dietary intake;
 - (B) Anthropometric, biochemical, and clinical variables;
 - (C) Feeding skills and feeding problems; and
 - (D) Food habits and food preferences;
 - (ii) Developing and monitoring appropriate plans to address the nutritional needs of children eligible under this part, based on the findings in paragraph (d)(7)(i) of this section; and

(iii) Making referrals to appropriate community resources to carry out nutrition goals.

(8) **Occupational therapy** includes services to address the functional needs of a child related to adaptive development, adaptive behavior and play, and sensory, motor, and postural development. These services are designed to improve the child's functional ability to perform tasks in home, school, and community settings, and include—

- (i) Identification, assessment, and intervention;
- (ii) Adaptation of the environment, and selection, design, and fabrication of assistive and orthotic devices to facilitate development and promote the acquisition of functional skills; and
- (iii) Prevention or minimization of the impact of initial or future impairment, delay in development, or loss of functional ability.

(9) **Physical therapy** includes services to address the promotion of sensorimotor function through enhancement of musculoskeletal status, neurobehavioral organization, perceptual and motor development, cardiopulmonary status, and effective environmental adaptation. These services include—

- (i) Screening, evaluation, and assessment of infants and toddlers to identify movement dysfunction;
- (ii) Obtaining, interpreting, and integrating information appropriate to program planning to prevent, alleviate, or compensate for movement dysfunction and related functional problems; and
- (iii) Providing individual and group services or treatment to prevent, alleviate, or compensate for movement dysfunction and related functional problems.

(10) **Psychological services** includes-

- (i) Administering psychological and developmental tests and other assessment procedures;
- (ii) Interpreting assessment results;
- (iii) Obtaining, integrating, and interpreting information about child behavior, and child and family conditions related to learning, mental health, and development; and
- (iv) Planning and managing a program of psychological services, including psychological counseling for children and parents, family counseling, consultation on child development, parent training, and education programs.

(11) **Service coordination services** means assistance and services provided by a service coordinator to a child eligible under this part and the child's family that are in addition to the functions and

activities included under Sec. 303.23.

(12) Social work services includes--

- (i) Making home visits to evaluate a child's living conditions and patterns of parent-child interaction;
- (ii) Preparing a social or emotional developmental assessment of the child within the family context;
- (iii) Providing individual and family-group counseling with parents and other family members, and appropriate social skill-building activities with the child and parents;
- (iv) Working with those problems in a child's and family's living situation (home, community, and any center where early intervention services are provided) that affect the child's maximum utilization of early intervention services; and
- (v) Identifying, mobilizing, and coordinating community resources and services to enable the child and family to receive maximum benefit from early intervention services.

(13) Special instruction includes--

- (i) The design of learning environments and activities that promote the child's acquisition of skills in a variety of developmental areas, including cognitive processes and social interaction;
- (ii) Curriculum planning, including the planned interaction of personnel, materials, and time and space, that leads to achieving the outcomes in the child's individualized family service plan;
- (iii) Providing families with information, skills, and support related to enhancing the skill development of the child; and
- (iv) Working with the child to enhance the child's development.

(14) Speech-language pathology includes--

- (i) Identification of children with communicative or oropharyngeal disorders and delays in development of communication skills, including the diagnosis and appraisal of specific disorders and delays in those skills;
- (ii) Referral for medical or other professional services necessary for the habilitation or rehabilitation of children with communicative or oropharyngeal disorders and delays in development of communication skills; and
- (iii) Provision of services for the habilitation, rehabilitation, or prevention of communicative or oropharyngeal disorders and delays in development of communication skills.

(15) Transportation and related costs includes the cost of travel (e.g., mileage, or travel by taxi,

common carrier, or other means) and other costs (e.g., tolls and parking expenses) that are necessary to enable a child eligible under this part and the child's family to receive early intervention services.

(16) Vision services means--

- (i) Evaluation and assessment of visual functioning, including the diagnosis and appraisal of specific visual disorders, delays, and abilities;
- (ii) Referral for medical or other professional services necessary for the habilitation or rehabilitation of visual functioning disorders, or both; and
- (iii) Communication skills training, orientation and mobility training for all environments, visual training, independent living skills training, and additional training necessary to activate visual motor abilities.

Legal Requirements: Appendix B Conditions Associated (with and without) High Probability of Developmental Delay

Conditions Associated with High Probability of Developmental Delay	Conditions <u>NOT</u> Associated with High Probability of Developmental Delay
<ol style="list-style-type: none"> 1. Chromosomal disorders – autosomal, e.g. Down syndrome 2. Intraventricular hemorrhage - Grades III or IV 3. Congenital infection – symptomatic 4. Infants showing significant effects of maternal prenatal drug abuse, e.g. Fetal Alcohol Syndrome 5. Prematurity with birth weight of less than 1200 grams 6. Severe congenital malformations, such as meningomyelocele and congenital hydrocephalus 7. Inborn errors of metabolism where either the diagnosis is late, there is not treatment available, or inadequate treatment, such as maple syrup urine disease, urea cycle defects, galactosemia, lysosomal storage diseases, and those carbohydrate disorders associated with CNS involvement. 8. Neurodegenerative disorders that have their onset in infancy and early childhood, such as adrenoleukodystrophy and TaySachs disease. 9. Epilepsy, where seizures are frequent or difficult to control, or the underlying condition is associated with frequent cognitive impairment e.g., infantile spasms 10. Severe encephalopathy resulting from insult to the brain, such as trauma, drowning, poisoning, or infection. 11. Sensory impairments where appropriate treatment still leaves significant impairment, e.g. vision not corrected to normal for age in either eye, or mild or greater hearing loss in the best ear persistent even after appropriate treatment. 12. AIDS, symptomatic or known infected. 13. Lead poisoning, with lead level of 20 ug/dL or greater. 14. Infants affected by intrauterine drug exposure. 	<ol style="list-style-type: none"> 1. Chromosomal- sex chromosome disorders e.g. Turner’s Syndrome 2. Intraventricular hemorrhage Grades I or II 3. Congenital infection –asymptomatic 4. Infants with maternal prenatal drug abuse but showing minimal effect e.g. Fetal Alcohol Effect 5. Prematurity with birth weight of 1200 to 2500 grams 6. mild congenital malformations, such as meningocele and spina bifida occulta. 7. In born errors of metabolism where early diagnosis is possible and appropriate treatment has been implemented such as PKU, pyridoxine-responsive homocystinuria, hypothyroidism biotinidase deficiency. 8. Neurodegenerative disorders that have their onset in late childhood or adulthood, such as multiple sclerosis and Hunting’s diseases. 9. Seizure disorders which are appropriately treated and do not have ongoing seizures, such as neonatal seizures, febrile seizures, simple generalized seizure disorder. 10. Mild insults to the brain that leave no sequelae and are not associated with significant risk of developmental delay, such as aseptic meningitis. 11. Sensory impairments, e.g. vision or hearing defects which are correctable with appropriate treatment. 1. Infant born to an HIV positive mother where the status of the infant’s infection is unknown and the child has no symptoms of HIV infection. 2. Asymptomatic lead intoxication with lead level less than 20ug/dL. 3. Infants exposed to intrauterine drug exposure without demonstrable effects.

Reference: Clarification of High Probability Task Force. State of Maryland Interagency

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