

Chapter 11

INFANT, TODDLER, AND PRESCHOOL PROGRAMS

What This Chapter Is About

Under Michigan and federal law, children with disabilities birth through five years old are eligible for special education and support services. Children “at risk” of having a disability are also eligible for services. Children under age three may receive either special education services or “early intervention” services set forth in an Individualized Family Service Plan (IFSP). Children ages two years six months and older receive traditional special education services through the IEP or 504 plan.

Early intervention services differ slightly from special education services in that they include family support services and are preventive in nature. The Michigan Department of Education is the lead agency responsible for providing early intervention services. Such services are multidisciplinary, involving many agencies, and require case management.

Children receiving early intervention and preschool special education services have many of the same rights as older students in special education, including the right to special education, related services, due process protections, and the right to services in the least restrictive environment.

Advocacy Hints in Chapter 11

- ◆ Students who do not qualify as “disabled” under IDEA may still qualify for services and supports under Section 504 (Page 6).
- ◆ Use the “at risk” category to get services for your child without labeling him or her inappropriately (Page 6).
- ◆ When deciding where the least restrictive environment is for your child, look at where he or she is most comfortable and where a child without a disability would attend the same kind of program (Page 7).

Michigan is one of the five "birth-mandate" states that have provided special education services for eligible students from birth. Beginning in 1973, the Michigan Mandatory Special Education Act mandated services for young children through the same procedure used for school-age students, including "Child Find" activities, referrals, evaluation, IEPTs, IEPs, and procedural safeguards. Special education services to young children include school district preschool programs, Early Childhood Special Education programs, services in private preschool programs, and referrals to agencies such as Head Start. **R 340.1754; R 340.1755.**

In addition, infants and young children from birth to age three also may receive “early intervention” services under Part C of IDEA and the Michigan “Early On” program. Early On services take a multi-agency approach to services and include services for the family through the Individual Family

Service Plan (IFSP). Early On services may include assistance in the family settings and may provide education for parents on infant stimulation and play, physical therapy, and other services related to and supporting cognitive, psychosocial, and physical development. **34 CFR 303.13.**

In 1986, Congress changed the way most states provide services for children less than five years old. This law mandated special education services and protections for three to five year olds and early intervention services for infants and toddlers, birth to age three. The new federal law also gave states the discretion to provide services for "at risk" infants and toddlers. Because Michigan already offered services to infants and toddlers with disabilities, more emphasis was placed on identifying and providing services for "at risk" children.

Children who may not be eligible for services because they do not meet the eligibility requirements for special education or Early On may qualify under the broader eligibility of Section 504. Chapter 13 of this manual includes a full discussion of eligibility for programs and services under Section 504's broader definition of "person with a disability."

Early Intervention or "Early On" Services

"Infants and toddlers with disabilities" are individuals from birth to age three who need early intervention services because they:

- ◆ are experiencing developmental delays as measured by appropriate diagnostic instruments and procedures in one or more of the following areas: cognitive development, physical development, communication development, social or emotional development, or adaptive development, or
- ◆ have a diagnosed physical or mental condition which has a high probability of resulting in developmental delay. **34 CFR 303.21.**

"Infants and toddlers with disabilities" may also include, at the State's discretion:

- ◆ at-risk infants and toddlers
- ◆ children with disabilities who are eligible for pre-school services and previously received early intervention services until such children enter or are eligible to enter kindergarten or elementary school. **34 CFR 303.21.**

Federal requirements for early intervention services for infants and toddlers vary somewhat from those previously used in Michigan and from those for preschoolers and school-age students.

- ◆ Services address the long-term benefits of early identification and treatment.
- ◆ Services are multidisciplinary and require the participation of several agencies in addition to the school, including public health and community mental health programs. In

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multidisciplinary activities, a lead agency must be designated; in Michigan, this is the Department of Education.

- ◆ Services have a family focus, assisting the family in areas that affect the child's education and development.
- ◆ Programs for infants and toddlers (when appropriate, preschool children) are developed in an Individualized Family Service Plan (IFSP) rather than the IEP used for preschool and school-age students.
- ◆ Transition from infant-toddler programs to preschool programs is coordinated and planned. Referrals from infant-toddler programs to preschool programs are to be made at least 90 days prior to the child's third birthday.

Services include a case manager to assist parents in coordinating services.

Early intervention services are:

- ◆ provided under public supervision;
- ◆ provided at no cost except where federal and state law provide for a system of payments by families, including a sliding fee scale; and,
- ◆ designed to meet the developmental needs of an infant or toddler with a disability in physical, cognitive, communication, social/emotional, or adaptive development. **34 CFR 303.13(a).**

Early intervention services must meet state standards and must include:

- ◆ family training, counseling, and home visits,
- ◆ special instruction;
- ◆ speech pathology and audiology, sign language and cued language services;
- ◆ occupational therapy;
- ◆ physical therapy;
- ◆ psychological services;
- ◆ service coordination services;
- ◆ medical services only for diagnostic or evaluation purposes;
- ◆ early identification, screening, and assessment services;

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- ◆ health services necessary to enable the infant or toddler to benefit from the other early intervention services;
- ◆ social work services;
- ◆ vision services;
- ◆ assistive technology devices and services; and,
- ◆ transportation and related costs that are necessary to enable an infant or toddler and their family to receive services. **34 CFR 303.13(b)**.

Services must be provided by qualified personnel, including:

- ◆ special educators;
- ◆ speech and language pathologists;
- ◆ audiologists;
- ◆ occupational therapists;
- ◆ physical therapists;
- ◆ psychologists;
- ◆ social workers;
- ◆ nurses;
- ◆ registered dietitians;
- ◆ family therapists;
- ◆ vision specialists, including ophthalmologists and optometrists;
- ◆ orientation and mobility specialists; and,
- ◆ pediatricians and other physicians (for diagnostic and evaluation purposes). **34 CFR 303.13(c)**.

Services must be provided, to the maximum extent appropriate, in natural environments including in the home and community settings in which children without disabilities participate.

Individualized Family Service Plan (IFSP)

For school-age students and most three to five-year-olds, special education services are written in an IEP. Early intervention services for children from birth through age two are written in an individualized family service plan (IFSP). The IFSP is broader than the IEP, including education services but also a wide range of other services that may be provided by agencies other than the school. Families are involved with the school and other agencies in developing the plan. **34 CFR 303.20, 303.340.**

The IFSP must be written and developed by a multidisciplinary team including the parent or guardian, as required, and must be based on a multidisciplinary assessment of unique strengths and needs and the identification of services appropriate to meet such needs. **34 CFR 303.321(a)(1)(ii)(A).** The IFSP must contain:

- ◆ a statement of the infant's or toddler's present levels of development in physical, cognitive, communication, social or emotional, and adaptive development, based on objective criteria;
- ◆ a statement of the family's resources, priorities and concerns related to enhancing the infant or toddler's development with a disability;
- ◆ a statement of the measurable results or outcomes expected to be achieved for the infant or toddler and the family, including pre-literacy and language skills, as developmentally appropriate for the child and the criteria, procedures and timeliness used to determine the degree to which progress toward achieving the results or outcomes is being made, and whether modifications or revision of the results our outcome is necessary;
- ◆ a statement of specific early intervention services based on peer-evaluated research to the extent practicable necessary to meet the unique needs of the infant or toddler and the family, including the length, duration, frequency, intensity, and method of delivering services;
- ◆ a statement of natural environments in which early intervention services will appropriately be provided, including a justification of the extent, if any, to which services will not be provided in a natural environment;
- ◆ payment arrangements, if any;
- ◆ the projected dates for initiation of services ;
- ◆ the name of the service coordinator from the profession most immediately relevant to the infant's or toddler's or family's needs who will be responsible for the implementation of the plan and coordination with other agencies and persons, including transition services; and,
- ◆ the steps to be taken supporting the transition of the toddler with a disability to preschool or other appropriate services to the extent such services are considered appropriate. **34 CFR 303.344 .**

The service area's Early On coordinator, upon receipt of a parent's request for evaluation, must forward the request for an evaluation to the responsible district within seven days. **34 CFR 303.303**. Unless there are "exceptional circumstances" (parents not available or not providing consent), the initial IFSP meeting must be held within 45 calendar days of receipt of the referral by the lead agency or early intervention service provider. **34 CFR 303.310**.

With the parent's consent, early intervention services may commence prior to the completion of the assessment. **34 CFR 303.345**. The IFSP must be evaluated once a year and the family shall be provided a review of the plan at six-month intervals (or more often where appropriate based on infant or toddler and family needs). **34 CFR 303.342**.

Lead Agency

IDEA requires that early intervention services be multidisciplinary, using expertise and staff as necessary from agencies other than the school as needed by individual children and their families. To coordinate and oversee these programs, each state is responsible for designating a lead agency. In Michigan, the lead agency is the Department of Education. This means that in local communities, the local school district or intermediate school district is responsible for identifying eligible children, for providing educational services, and for coordinating and overseeing other services in the child's IFSP. **34 CFR 303.12, 120**.

Transition to Special Education Services

Early intervention requirements emphasize the need for careful planning to facilitate the transition from early intervention services to a free appropriate public education under the traditional special education services of IDEA. **34 CFR 303.209**. Eligibility for special education services is not automatic for all students who have received early intervention services. Some children will not meet the eligibility requirements because they do not need special education or related services to benefit from their education, or because they do not have a disability that meets the IDEA eligibility criteria (or Section 504 broader eligibility standard). For these students, services under special education law will end.

States are required to develop policies and procedures to facilitate this transition. No fewer than 90 days before the child's third birthday, planning must begin to insure that eligibility is determined and an IEP is developed and implemented by that date for eligible students. **34 CFR 303.209(b)(i)**. If the child is found eligible for Early On services fewer than 90 days but more than 45 days before the child's third birthday, the lead agency shall notify the state and the local district "as soon as possible" that a child who may be eligible for special education services under IDEA Part B will reach the age of three. **34 CFR 303.209(b)(ii)**. If a child is referred for initial eligibility under Early On fewer than 45 days before the third birthday and might be eligible under Part B, the lead agency must refer the child to the state and to the local district but is not responsible for conducting an initial evaluation, assessment, or IFSP meeting. **34 CFR 303.209(b)(iii)**.

► **Advocacy Hint: Remember Section 504.** Remember that some students who do not meet the eligibility requirements of special education law may meet the broader eligibility of Section 504 and may still have an entitlement to services.

Preschool Services

Students age three to nine with "developmental delays" may be included in the definition of students with disabilities, at the state's discretion, "not to expand or diminish the population of students eligible under "Part B" but to ensure that all eligible preschoolers are served and that students are not inappropriately labeled." **House Report No. 102-198, 4 (1991).**

Students with developmental delays, as defined by the state and as measured by appropriate diagnostic instruments and procedures, need special education services in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development. **34 CFR 300.8(b).** In Michigan, eligibility under Early Childhood Developmental Delay (ECDD) goes through age seven. **R 340.1711.** Preschool children may receive early childhood special education programs, **R 340.1754**, or early childhood special education services, **R 340.1755**, through age five. Michigan children may also receive special education services from birth.

► **Advocacy Hint: Don't forget "at risk".** It is often difficult to diagnose developmental disabilities in infants, toddlers, and very young students. It may also be difficult to determine the extent of limitations caused by disabilities. Early intervention services are provided under labels such as "at risk, or "developmental delay" so that young students will not be labeled inappropriately for the purpose of receiving services. Michigan has a list of established conditions, the diagnosis of which indicates automatic eligibility for Early On. Recent or chronic lead exposure is one of these conditions. A non-exhaustive list can be found at <http://eotta.ccesa.org/Files/PDF/Early On Established Conditions List 04-06-11.pdf>.

In Michigan, Early On services are not available to children after their third birthday. Many toddlers, however, may continue to be eligible for special education services under Part B and state law. In addition, transition requirements under Part C provide that planning takes place not fewer than 90 days—and not more than nine months—before the toddler's third birthday. **34 CFR 303.209.**

Least Restrictive Environment

For infants and toddlers receiving early intervention services, the law states that "to the maximum extent appropriate," infants and toddlers are to be provided services in "natural environments." **34 CFR 303.126.**

For preschool children age three years and above who receive special education services, the regulations provide that school districts that do not operate preschool programs for children without disabilities must still provide services in the most integrated setting consistent with the

child's unique needs. This can be done by using preschool programs operated by community agencies or by other state or federal agencies such as Head Start, private preschool programs, or other publicly funded preschool programs. **34 CFR 300.116.**

► **Advocacy Hint: LRE may also be where the student learns the most.** When you attempt to determine the LRE for a specific service, determine where the child is most likely to be comfortable and secure enough to benefit from the service. Also think about where that specific service would be provided for an infant, toddler, or preschool age child who does not have a disability.

Procedural Safeguards

All children, infants, toddlers, preschool and school-age children, who are eligible for services under IDEA have the same due process rights. **34 CFR 303.400.** These rights include the following.

- ◆ Timely resolution of administrative complaints and review in state or federal court, **34 CFR 303.430;**
- ◆ Confidentially maintained records and access to records related to the assessment, screening, eligibility determination, and the development and implementation of an IFSP, **34 CFR 303.401-417;**
- ◆ Protection of the rights of infants or toddlers who are wards of the state or whose parents are unknown or unavailable, by the appointment of surrogate parents or guardians, **34 CFR 303.422;**
- ◆ Prior written notice when the state agency or service provider proposes to initiate or change or refuses to initiate or change the identification, evaluation, placement, or the provision of appropriate early intervention services, **34 CFR 303.420-421;**
- ◆ Procedures designed to assure that the parent or guardian fully understands all procedural safeguards, including a description of mediation (**34 CFR 303.431**), how to file a state complaint (**34 CFR 303.432-434**) and how to request a due process hearing (**34 CFR 303.430, R 340.1724f**); and,
- ◆ That unless the school and the parent or guardian agree, during any proceeding involving a complaint, the child should continue to receive the appropriate early intervention services being provided or if applying for initial services shall receive the services not in dispute, **34 CFR 303.430**