

## 902 KAR 30:120. Evaluation and eligibility.

RELATES TO: KRS 200.654, 200.668, 34 C.F.R. 303.11, 303.300, 303.322, 20 U.S.C. 1434

STATUTORY AUTHORITY: KRS 194A.030(7), 194A.050, 200.660(7), 34 C.F.R. 303.322, 20 U.S.C. 1434

NECESSITY, FUNCTION, AND CONFORMITY: KRS 200.660 requires the Cabinet for Health and Family Services to administer funds appropriated to implement the provisions of KRS 200.650 to 200.676, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation establishes the evaluation, eligibility, and redetermination of eligibility requirements for First Steps, Kentucky's Early Intervention Program.

### Section 1. Eligibility.

(1) A child shall be eligible for First Steps service if the child:

- (a) Is age birth up to three (3) years;
- (b) Is a resident of Kentucky at the time of referral and resides in Kentucky while receiving early intervention services; and
- (c) 1. Has a documented established risk condition that has a high

probability of resulting in developmental delay; or

2. Is determined to have a significant developmental delay based on the evaluation and assessment process.

(2) A determination of initial eligibility, assessments, and the initial IFSP team meeting shall occur within forty-five (45) calendar days after a point of entry receives an initial referral for a child who meets the requirements established in subsection (1) of this section.

(3) Eligibility by established risk conditions:

(a) In accordance with KRS 200.654(10)(b), a child meeting the criteria established in subsection (1)(a) and (b) of this section with a suspected established risk condition shall be eligible once the diagnosis is confirmed by a physician and documented in the medical records provided to the First Steps Program.

(b) A list of approved established risk diagnoses shall be maintained by the First Steps Program and made available in policies and procedures.

1. A child with an established risk shall have a five (5) area assessment, assessing the five (5) areas listed in subsection (4)(a) of this section, completed by a developmental evaluator using a cabinet-approved criterion referenced assessment instrument in lieu of a primary level evaluation.

2. If the established risk condition relates to hearing loss, the five (5) area assessment shall be performed by a speech therapist or a teacher of the deaf and hard of hearing who is approved as a developmental evaluator.

(4) Eligibility by developmental delay:

(a) A child meeting the criteria established in subsection (1)(a) and (b) of this section shall be eligible for First Steps services if the child is determined to have fallen significantly behind in development, based on the evaluation and assessment process, in one (1) or more of the following domains of development:

1. Total cognitive development;

2. Total communication area through speech and language development, which shall include expressive and receptive language;

3. Total physical development including motor development, vision, hearing, and general health status;

4. Total social and emotional development; or

5. Total adaptive skills development.

(b) Evidence of falling significantly behind in developmental norms shall be determined on a norm referenced test by the child's score that is:

1. Two (2) standard deviations below the mean in one (1) skill area; or

2. At least one and one-half (1 1/2) standard deviations below the mean in two (2) skill areas.

(c) 1. If a norm-referenced test reveals a delay in one (1) of the five (5) skill areas but does not meet the eligibility criteria required by paragraph (b) of this subsection, a more in-depth standardized test in that area of development may be administered if the following is evident:

a. The primary level evaluator and a parent or guardian have a concern or suspect that the child's delay is greater than the testing revealed;

b. A different norm-referenced test tool reveals a standardized score which would meet eligibility criteria; and

c. There is one (1) area of development that is of concern.

2. The results of the alternate testing required by subparagraph 1. of this paragraph shall determine the child's eligibility if the standardized scores indicate a delay of greater than two (2) standard deviations.

(5) Eligibility by professional judgment. A child may be determined eligible by informed clinical opinion by the following multidisciplinary evaluation teams of professionals:

(a) An approved neonatal follow-up program team;

(b) An approved intensive level evaluation team; or

(c) The designated record review team, if reviewing for eligibility.

(6) To be an approved neonatal follow-up program team, a university-based program shall:

(a) Submit to the cabinet the credentials and documentation of experience in conducting assessments for the birth to three (3) age population for each proposed team member; and

(b) Contract with the cabinet to conduct neuro-developmental follow-up of high risk infants.

(7) To be an approved intensive level evaluation team, two (2) or more professionals who meet the criteria established in Section 2(9) of this administrative regulation shall:

(a) Submit to the cabinet their credentials and documentation of experience in conducting assessments for the birth to three (3) age population for each proposed team member; and

(b) Contract with the cabinet to conduct intensive level evaluations.

### Section 2. Child Evaluation.

(1) A child referred to the First Steps Program who meets the criteria established in Section 1(1)(a) and (b) of this administrative regulation shall receive an evaluation to determine eligibility if:

- (a) There is a suspected developmental delay as confirmed by the cabinet-approved screening protocol; and
- (b) The child does not have an established risk diagnosis.

(2) For a child without an established risk diagnosis, the primary level evaluation shall be used to:

- (a) Determine eligibility;
- (b) Determine developmental status;
- (c) Establish the baselines for progress monitoring; and
- (d) Make recommendations for the Individual Family Service Plan (IFSP) outcomes.

(3)(a) Primary level evaluations shall include the five (5) developmental areas identified in Section 1(4)(a) of this administrative regulation using norm-referenced standardized instruments that provide a standard deviation score in the total domain for the five (5) areas and shall include a cabinet-approved criterion referenced assessment instrument.

(b) The primary level evaluation shall include:

1. A medical component completed by a physician or nurse practitioner that includes a:

- a. History and physical examination;
- b. Hearing and vision screening; and
- c. Recent medical evaluation in accordance with the timelines established in subsection (5) of this section; and

2. A developmental component completed by a cabinet-approved primary level evaluator that includes:

- a. A review of pertinent health and medical information;
- b. Completion of each appropriate instrument needed to determine the child's unique strengths and needs; and
- c. A recommendation of eligibility.

(c) Results of the evaluation shall be explained to the family.

(d) An evaluation report shall be written:

- 1. Within ten (10) calendar days of the completion of the evaluation; and
- 2. In clear, concise language that is easily understood by the family.

(4) Child records of evaluations transferred from a developmental evaluator outside the Kentucky Early Intervention System shall be reviewed by the Point of Entry staff and shall be used for eligibility determination if:

(a) The records meet evaluation timelines established in subsection (5) of this section; and

(b) The records contain the developmental evaluation information required by subsection (3)(b) of this section.

(5) If there is a recent medical or developmental evaluation available, as required by subsection (3)(b) of this section, it shall be used to determine eligibility if the evaluation was performed within:

(a) Three (3) months prior to referral to First Steps, for a child under twelve (12) months of age; or

(b) Six (6) months prior to referral to First Steps, for a child between twelve (12) months of age and three (3) years of age.

(6)(a) A child referred to the First Steps program who was born at less than thirty-seven (37) weeks gestational age shall be evaluated and assessed using an adjusted gestational age to correct for prematurity.

(b) For a child who is less than six (6) months corrected age, the primary evaluation shall be done by an approved intensive level evaluation team or an approved neonatal follow-up program team, in accordance with Section 1(5) of this administrative regulation.

(7) If the child does not have an established risk diagnosis and is determined not eligible, the POE staff shall discuss available community resources, such as Medicaid, EPSDT, the Department for Public Health's and the Commission for Children with Special Health Care Need's (CCSHCN's) Title V programs, and other third-party payors.

(8) A review of the child's First Steps record by the record review team shall be the second level in the First Steps evaluation system that shall be utilized to determine eligibility for cases which are complex or have contradictory information from testing.

(a) Upon obtaining a written consent by the parent or guardian, a service coordinator shall submit a child's record to the Department for Public Health or the designee for a record review if:

- 1. The child does not meet eligibility guidelines at the primary level;
- 2. The primary level evaluator and a parent or guardian have concerns that the child is developing atypically; and
- 3. A determination of eligibility based on professional judgment is needed.

(b) Upon receiving a referral, a record review team shall conduct a record review and issue findings within ten (10) calendar days of receipt of the request.

(9) If the record review team requests an intensive level clinical evaluation, this shall be conducted by a team of early intervention professionals approved by the Part C Coordinator that shall include the following:

- (a) 1. A board certified medical professional with expertise in early childhood development;
- 2. A board certified developmental pediatrician;
- 3. A pediatrician who has training and experience in the area of early childhood development;
- 4. A board certified pediatric psychiatrist; or
- 5. A board certified pediatric neurologist; and

(b) One (1) or more developmental professionals identified in 902 KAR 30:150, Section 2(1)(a)-(s).

### Section 3. Annual Redetermination of Eligibility.

(1) A redetermination of eligibility shall not be used to address concerns that are medical in nature.

(2) A child shall have continuing program eligibility for First Steps services if:

(a) The child is:

- 1. Under three (3) years old; and
- 2. A resident of Kentucky; and

(b) The result of the most recent semi-annual progress review demonstrates:

1. An ongoing delay or failure to attain an expected level of development in one or more developmental areas; and

2. Continued First Steps services are required in order to support continuing developmental progress by consensus of the IFSP team.

(3) Based on the results of the redetermination of eligibility, the IFSP team shall:

- (a) Continue with the same outcomes and services;
  - (b) Continue with modified outcomes and services; or
  - (c) Transition the child from First Steps services.
- (4) Redetermination of eligibility shall occur at least annually.

(a) The annual redetermination shall be part of the child's ongoing assessment and shall include an assessment in all five (5) areas by the Primary Service Provider (PSP) using a cabinet-approved criterion referenced instrument.

(b) If a person directly involved in conducting the evaluation and assessments is unable to attend an IFSP meeting, arrangements shall be made for that person's involvement by other means including participating in a telephone conference call, having a representative attend the meeting, or making pertinent records and reports available at the meeting.

#### Section 4. Incorporation by Reference.

(1) "The Early, Periodic, Screening, Diagnostic and Treatment (EPSDT) Periodicity Schedule", August 2003 edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

(23 Ky.R. 3133; Am. 3851; 4171; eff. 6-16-1997; 25 Ky.R. 661; 1407; eff. 1-19-1999; Recodified from 908 KAR 2:120, 10-25-2001; 30 Ky.R. 318; 619; 1287; eff. 9-16-2003; 31 Ky.R. 485; 1270; eff. 1-19-2005; Recodified from 911 KAR 2:120, 5-17-2010; 37 Ky.R. 518; 1259; 1665; eff. 2-4-11.)