

I. STATE DEFINITION OF DEVELOPMENTAL DELAY; DEFINITION OF ELIGIBILITY FOR SERVICES

Virginia's definition of developmental delay and eligibility procedures ensure that all children from birth through age two who are developmentally delayed or who have a diagnosed physical or mental condition that has a high probability of resulting in delay are eligible to participate in the Part C program. The determination of eligibility for Part C services is documented in the child's Individualized Family Service Plan (IFSP). The Virginia Department of Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS), as Lead Agency, ensures that these definitions and the eligibility requirements ensure uniform access to Part C services in Virginia. This component presents Virginia's definition of developmental delay, a list of conditions which have a high probability of resulting in delay and the procedures for determining eligibility for the Part C program.

A. Definition of Developmental Delay

1. Children who are functioning at least 25% below their chronological or adjusted age¹, in one or more of the following areas:
 - a. *cognitive development*;
 - b. *physical development (including fine motor, gross motor, vision, and hearing)*;
 - c. *communication development*;
 - d. *social or emotional development*;
 - e. *adaptive development*. (34 CFR 303.16(a)(1))

OR -

2. Children who manifest atypical development or behavior, which is demonstrated by one or more of the following criteria (even when evaluation does not document a 25% developmental delay):
 - a. Abnormal or questionable sensory-motor responses, such as:
 - (1) abnormal muscle tone;
 - (2) limitations in joint range of motion;
 - (3) abnormal reflex or postural reactions;
 - (4) poor quality of movement patterns or quality of skill performance;
 - (5) oral-motor skills dysfunction, including feeding difficulties
 - b. Identified affective disorders, such as:
 - (1) delay or abnormality in achieving expected emotional milestones;
 - (2) persistent failure to initiate or respond to most social interactions;
 - (3) fearfulness or other distress that does not respond to comforting by caregivers;
3. Behavioral disorders that interfere with the acquisition of developmental skills.

- B. Children who have a *diagnosed physical or mental condition that has a high probability of resulting in a developmental delay*. (34 CFR 303.16 (a)(2))

Those identifiable conditions include, but are not limited to:

1. seizures/significant encephalopathy (identifies the high risk group with low Apgars and/or asphyxia);
2. significant central nervous system anomaly;
3. severe Grade 3 intraventricular hemorrhage with hydrocephalus or Grade 4 intraventricular hemorrhage;
4. symptomatic congenital infection;

¹ For children born prematurely (gestation < 37 weeks), the child's actual adjusted age is used to determine developmental status. Chronological age is used once the child is 18 months old.

5. effects of toxic exposure including fetal alcohol syndrome, drug withdrawal and exposure to chronic maternal use of anticonvulsants, antineoplastics, and anticoagulants;
6. myelodysplasia;
7. congenital or acquired hearing loss;
8. visual disabilities;
9. chromosomal abnormalities, including Down Syndrome;
10. brain or spinal cord trauma, with abnormal neurologic exam at discharge;
11. inborn errors of metabolism;
12. microcephaly;
13. severe attachment disorders;
14. failure to thrive; or
15. other physical or mental conditions at the multidisciplinary/interdisciplinary/transdisciplinary team members' discretion.

C. Determination of Eligibility

In Virginia, all children are determined eligible for Part C services by the multidisciplinary/interdisciplinary/transdisciplinary team, which includes the family. The following procedures are used to determine eligibility:²

1. Children whose development is delayed or atypical in one or more of the developmental areas identified in A.1. above must be determined eligible by either:
 - a. determining the specific level of delay, as measured and verified by qualified personnel using appropriate criterion-referenced or standardized diagnostic instruments and procedures, informed clinical opinion, and information provided by the child's parents;
 - OR-
 - b. determining the existence of atypical development by qualified professionals observing one or more of the atypical behaviors in the course of administering their evaluation/assessment procedures.
2. Children who have a diagnosed physical or mental condition which has a high probability of resulting in developmental delay (such as those listed in B 1-15 above) must be determined eligible by identification of a specific condition with known etiologies and developmental consequences. Informed clinical opinion is used in determining such a diagnosed physical or mental condition.

- D. Children at risk for developmental delay are not included in Virginia's current definition of eligibility for purposes of entitlement to Part C services. However, the Virginia Interagency Coordinating Council (VICC) and the Lead Agency recognize that children are at risk for developmental delays as a result of environmental and/or biological factors. These children can benefit from early intervention services and providers of early intervention services are encouraged to extend such services to them whenever circumstances allow.

The VICC and the Lead Agency may, on a periodic basis and as feasible and warranted, study the feasibility of including at risk children under the definition of eligibility for services. The results of such studies will be used to determine the appropriate scope and type of services needed to serve these children and their families.

² See policies and procedures in Component VI - Multidisciplinary Evaluation/Assessment for additional information regarding Virginia's procedures for evaluation/assessment techniques, decision-making processes used by multidisciplinary/interdisciplinary/transdisciplinary teams, procedures for resolving decisions where consensus of eligibility is not initially reached, and documentation of findings and results regarding eligibility.