

902 KAR 30:120. Evaluation and eligibility.

RELATES TO: KRS 200.654, 200.668, 211.647, 216.2970, 34 C.F.R. 303.11, 303.321, 303.322, 303.421, 20 U.S.C. 1434

STATUTORY AUTHORITY: KRS 194A.050, 200.660(7), 34 C.F.R. 303.300, 303.321, 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. Initial Eligibility.

- (1) Initial eligibility shall be determined by the review and synthesis of:
 - (a) The results of at least one (1) multi-domain evaluation instrument designed to confirm the presence of a significant developmental delay;
 - (b) Information about the child's developmental history through parent interview;
 - (c) Identification of the child's level of functioning in each developmental area;
 - (d) Information from other sources, such as childcare workers; and
 - (e) All available medical and educational records.
- (2) 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 or homeless within the boundaries of the state 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.
- (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. The established risk condition shall be documented in the child's record through the First Steps on-line data management system.
 - (b) The First Steps Established Risk Condition List shall be maintained by the First Steps Program.
 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 norm-referenced evaluation, in accordance with 902 KAR 30:130.
 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.
- (4) Eligibility by developmental delay:
 - (a) A child meeting the criteria established in subsection (2)(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 initial 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 be considered as part of the child's eligibility if the standardized scores indicate a delay of at least 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, as described in 902 KAR 30:150 Section 2(3)(e);
 - (b) An approved intensive level evaluation team, as described in 902 KAR 30:150 Section 2(3)(d); or
 - (c) The designated record review team, if reviewing for eligibility.

Section 2. Initial Child Evaluation.

- (1) Prior to the administration of an evaluation instrument, the child's vision and hearing status shall be determined through screening or evaluation.
- (2) A child referred to the First Steps Program who meets the criteria established in Section 1(2)(a) and (b) of this administrative regulation shall receive an initial evaluation if:
 - (a) There is a suspected developmental delay as confirmed by the cabinet-approved screening protocol;
 - (b) The child does not have an established risk diagnosis; and
 - (c) The parent requests and consents to an evaluation.
- (3) For a child without an established risk diagnosis, an initial evaluation shall be used to:
 - (a) Determine developmental status; and
 - (b) Establish the baselines for progress monitoring.
- (4) For a child with an established risk diagnosis, a criterion referenced assessment shall be completed to:
 - (a) Determine developmental status; and
 - (b) Establish the baseline for progress monitoring.
- (5)
 - (a) Initial 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, in accordance with 902 KAR 30:130.

(b) The initial evaluation shall include:

1. A medical component completed by a physician or nurse practitioner that includes a complete history and physical examination and other medical information; and
2. A developmental component completed by a cabinet-approved initial evaluator, in accordance with 902 KAR 30:150, that includes:
 - a. A statement of the child's health status during the evaluation, including notation of health issues that affect the results of the evaluation; and
 - b. Completion of each appropriate instrument needed to determine the child's unique strengths and needs.

(c) An evaluation report shall be entered into the First Steps online data management system:

1. Within five (5) working days of the completion of the evaluation; and
2. In clear, concise language that is easily understood by the family.

(6) 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 (7) of this section; and
- (b) The records contain the developmental evaluation information required by subsection (5)(b) of this section.

(7) If there is a developmental evaluation available, as required by subsection (5)(b) of this section, it shall be considered as part of the child's 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.

(8)

(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, unless the child is twenty-four (24) months of age or older at the time of the referral.

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

(9) If the child does not have an established risk diagnosis and is determined not eligible, the POE staff shall:

- (a) Provide a First Steps Notice of Action (FS-9) in accordance with 34 C.F.R. 303.421; and
- (b) 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 community programs.

(10) 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 initial evaluation;
 2. The initial 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.

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 or homeless within the boundaries of the state; and
 - (b) The result of the most recent progress review, including the annual five (5) area assessment, demonstrates:
 1. A significant delay in at least one (1) or more developmental areas; and
 2. Continued First Steps services are required in order to support continuing developmental progress.
- (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 using a cabinet-approved criterion referenced instrument, in accordance with 902 KAR 30:130, and shall be completed between thirty (30) and sixty (60) days prior to the annual IFSP date.
 - (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 records and reports available at the meeting.

Section 4. Determination of Child's Hearing Status.

- (1) If the referral is for a child who has a diagnosis of significant hearing loss, as specified by KRS 200.654(10)(b), the child shall be considered to have an established risk diagnosis and be eligible for First Steps services and the referral process shall continue.
- (2) If the referral is for a child who is suspected of having a hearing loss, with no verification of degree of loss or diagnosis, and who is suspected of having developmental delays, the POE staff shall initiate the evaluation for First Steps, which shall include an audiological evaluation at an approved Infant Audiological Assessment and Diagnostic Center as specified by KRS 211.647 and 216.2970.

Section 5. Incorporation by Reference.

- (1) The following material is incorporated by reference:
 - (a) "First Steps Notice of Action (FS-9)", October 2012 edition; and
 - (b) "First Steps Established Risk Condition list", January 2014.
- (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. 2-4-2011; 39 Ky.R. 2410; 40 Ky.R. 839; eff. 10-16-2013; TAm eff. 5-16-2014; 2876; 41 Ky.R. 788; eff. 10-15-2014; Cert. eff. 6-15-2021.)