

# **Evaluation and Reevaluation Guidance and Procedures**

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# Evaluation Procedures April 2013

The Manual is intended to provide technical assistance, guidance and best practices, where appropriate. It should be up-dated periodically to reflect changes in rules and regulations that govern special education procedures.

Resource documents include:

## **Federal Regulations:**

- IDEA regulations, 34 CFR 300 (2004), noted in the text as **§ 300** with the following numbers indicating the subsection.
- Federal Register Commentary to the IDEA 2004 regulations, noted in text as **Fed. Reg. p. (2006)** with the following numbers indicating the page number.
- Title 18 of the United States Code, noted in the text as **18 USC § XXXX**

## **State Statutes and Regulation:**

- Michigan Administrative Rules for Special Education, noted in text as R 340 with the following numbers indicating the subsection.
- The Revised School Code, (1976) noted in the text as **MCL § 380** with the following numbers indicating the subsection.

# Table of Contents

## I. Evaluation Procedures

- A. Conduct of Evaluation
- B. Evaluation Requirements

## II. Initial Evaluation

- A. Extension
- B. Exception
- C. Screening
- D. Parent Notification of Research Based Interventions
- E. Parent Notice

## III. Review of Existing Evaluation Data

## IV. Multidisciplinary Evaluation Team (MET)

- A. Suspected Disability
- B. Requirements of MET
- C. Child with a Disability
- D. Dual Eligibility

## VI. Independent Educational Evaluation

- A. Extension
- B. Exception
- C. Screening
- D. Parent Notification of Research Based Interventions
- E. Parent Notice

## VI. Additional Evaluation Procedures for Eligibility Areas under the MARSE

- A. Cognitive Impairment
- B. Emotional Impairment
- C. Hearing Impairment
- D. Visual Impairment
- E. Physical Impairment
- F. Other Health Impairment
- G. Speech and Language Impairment
- H. Early Childhood Developmental Delay
- I. Specific Learning Disability
- J. Severely Multiply Impaired
- K. Autism Spectrum Disorder
- L. Traumatic Brain Injury
- M. Deaf Blindness

## **Procedures**

### **I. Evaluation Procedures §300.304**

#### **A. Conduct of Evaluation § 300.304 (b)(1)**

In conducting an evaluation, the public agency must:

1. Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent, that may assist in determining:

a. Whether the student is a student with a disability under § 300.8;  
**§ 300.304(b)(1)(i),** and

b. The content of the student's IEP, including information related to enabling the student to be involved in and progress in the general education curriculum (or to a preschool child, to participate in appropriate activities)  
**§ 300.304(b)(1)(ii)**

2. Not use a single measure or assessment as the sole criterion for determining whether a student is a student with a disability and for determining an appropriate educational program for the student;  
**§ 300.304(b)(2)**

3. Use technically sound instruments that may assess the relative

## **Guidance**

The IDEA requirement for a Free Appropriate Public Education (FAPE) includes all evaluations at public expense and at no cost to the parents.  
§ 300.17(a)

The IDEA only references state approved standards under the additional requirements for identification of students with a Specific Learning Disability (SLD). It is recommended that LEAs use state approved standards when writing academic goals for all students regardless of eligibility category. (This practice aligns with the MDE model Individualized Education Program form).

Multidisciplinary Evaluation Teams (METs) must use information from a variety of sources to determine educational needs, including standardized tests, student performance on state approved standards, progress monitoring data, etc.

contribution of cognitive and behavioral factors, in addition to physical or developmental factors.  
**§ 300.304(b)(3);**

**B. Evaluation Requirements**  
**§ 300.304(c)(1)**

The public agency must ensure that:  
1. Assessments and other evaluation materials used to assess a student:

a. Are selected and administered so as not to be discriminatory on a racial or cultural basis;  
**§300.304(c)(1)(i);Fed. Reg. p. 46642 (2006)**

b. Are provided and administered in the student's native language or other mode of communication and the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;  
**§300.304(c)(1)(ii)**

Technically sound instruments generally refers to assessments that have been shown through research to be valid and reliable.

The "relative contribution," means that the assessment instruments allow the examiner to determine the extent to which a child's behavior is a result of the factors listed. **Fed. Reg. 46642(2006)**

Because of the variety of languages, cultural differences, and socialization practices, there is a limited list of appropriate materials to be used with all cultures and languages, and therefore some assessments may be biased. The evaluation plan must draw upon a variety of sources, including classroom performance, state and district wide assessments, aptitude and achievement tests, input from parents and teachers, as well as information on the student's physical condition, cultural and social background and adaptive behavior. All of these factors must be used in interpreting assessment results when looking at student eligibility.

In all direct contact with the student, including an evaluation of the student, native language means the language normally used by the student and not that of the parents, if there is a difference between the two. For individuals with deafness or blindness, or for individuals with no written language, the native language is the mode of communication that is normally used by the individual (such as sign language, Braille or oral communication).

c. Are used for the purposes for which the assessments or measure are valid and reliable;  
**§ 300.304(c)(1)(iii)**

d. Are administered by trained and knowledgeable personnel;  
**§ 300.304(c)(1)(iv)**and

e. Are administered in accordance with any instructions provided by the producer of the assessments.  
**§ 300.304(c)(1)(v)**

2. Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.  
**§ 300.304(c)(2)**

3. Assessments are selected and administered so as best to ensure that if an assessment is administered to a student with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills, (unless those skills are the factors that the test purports to measure).  
**§ 300.304 (c)(3)**

The publisher of each instrument includes guidelines and the training level required for administration of the test. Each individual must decide whether their formal academic training and supervised experience provide the background and knowledge required to use a particular test.

Varying from the directions for administration, scoring or interpretation of an assessment provided by the publisher, may impact the reliability or validity of the instrument, making them inappropriate for use for the

Any variance in the administration, scoring or interpretation of a testing instrument must be reported in the diagnostic report.

Some issues related to use of intellectual assessment:

- There are many different intelligence tests that measure different traits
- Many factors affect performance on intelligence tests
- Intelligence tests are one piece of a complex process of qualifying and serving students.

4. The student is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

**§ 300.304(c)(4);**

5. Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations. **§ 300.304(c)(5)**

a. When a student moves into a district and the district becomes aware that the student was in the process of an initial evaluation (which has not been completed), the receiving district must proceed with the evaluation as expeditiously as possible.

b. The district is not bound to the 30 school day rule. The district and the parent(s) must come to an agreement on a timeline to complete the evaluation. **§§ 300.301(d)(2), 300.301(e); R 340.1722a**

A Review of Existing Evaluation Data (REED) process helps develop a plan which gives direction for the appropriate areas to evaluate. Decisions regarding the areas to be assessed are determined by the suspected disability and the needs of the student. If other areas of need are noted during the evaluation which were not a part of the parental notice, the LEA must provide notice and obtain parental consent before any additional evaluations are conducted.

(See MDE Notice and Consent Procedures document regarding requirements for parental notice for evaluations.)

See MDE Notice and Consent Procedures document for specific procedures related to students who move to a district with a signed consent for an evaluation.

6. The evaluation is sufficiently comprehensive to identify all of the student's special education and related service needs, whether or not commonly linked to the disability category in which the student has been classified. **§ 300.304(c)(6); Fed. Reg. p. 46643 (2006)**

7. Assessment tools and strategies that provide relevant information that directly assist persons in determining the educational needs of the student are provided. **§ 300.304 (c)(7)**

8. Test Protocols and the Family Educational Rights and Privacy Act (FERPA).

a. Parents have the right to have access to their children's educational records.

b. Educational records are broadly defined as: "those records, files, documents, and other materials, which:

- (i) contain information directly related to a student; and
- (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution." 20U.S.C. §1232g(a)(4)(A) ;34 CFR§99.3

After a review of the existing data, the district will develop an evaluation plan based on the suspected disability and the suspected needs of the student specified in the request for an initial evaluation. (See section I,B,4). Based on the recommendation of the MET and Michigan criteria for eligibility, the IEP team will determine eligibility. The determination of services and programs is based on need, rather than eligibility. The IEP team will review other areas of need to determine services and programs.

Refer to most recent FERPA regulations for guidance. (Primary Technical Assistance Center –PTAC <http://nces.ed.gov/programs/ptac>



## **II. Request for an Initial Evaluation R 340.1721**

Within 10 days of receipt of a written request for an initial evaluation of a student suspected of having a disability, and before any formal evaluation designed to determine eligibility for special education programs and services, the public agency shall provide parent with written notice consistent with **34 CFR §300. 503** and shall request written request to evaluate.

A parent of a child with a disability may elect to receive notices by electronic mail communication if the public agency makes that option available. (Authority: 20 U.S.C. 1415 (n))

## **III. Initial Evaluation §300.301(c)(1)(i); R 340.1721(c)(2)**

**A.** Once a district receives a signed consent for an initial evaluation, they must conduct a full and individual evaluation and hold an initial Individualized Education Program (IEP) within 30 school days.

Only authorized personnel of the public agency with the authority to accept the signed consent (principal, special education director) should indicate/stamp the date consent was received (day "0"). The 30 school day timeline begins the following day.

**B. Extension R 340.1721c(2)**  
Michigan rules allow for an extension if agreed to by the parent and public agency.

The agreement between the parent and the district for an extension must be documented in writing before the 30 school day time line expires, and must be stated in **school** days.

**C. Exception § 300.301(d)**  
Federal regulations give only 2 circumstances in which the timeline from receipt of parental consent to completing the IEP do not apply:

1. The parent of the student repeatedly fails or refuses to produce the student for the evaluation; **§ 300.301(d)(1);**

The district must document its attempts to address the parent's refusal or failure to produce the student for an evaluation, or keep scheduled appointments

- At a minimum, the district should document the proposed times of the evaluations, the missed appointments, as well as efforts to address the parent's concerns and issues.
- Those situations in which the student is repeatedly absent from school on the day the evaluation is scheduled because the student is

ill, would need to be documented and evaluated in light of other instances of refusal. A pattern of absences on days of testing might indicate parent refusal if they were aware ahead of time when testing would take place. **Fed. Reg. p.46637(2006)**

Under Michigan rules, the process for an initial evaluation is inclusive of the evaluation and **completion of an IEP. R 340.1721(c)**. Therefore, regardless of the response or lack of response from the parent, every request for initial evaluation with parental consent must finish with an IEP. The result may be an ineligible IEP due to insufficient data. Since there is no service or program to implement, parental consent is not required if the parent chooses not to attend.

2. A student enrolls in a school of another public agency after the relevant timeframe from receipt of parent consent for evaluation (30 school days or agreed upon extension) has begun.

**§ 300.301(d)(2)**

For the district from which the student is moving:

- they are obligated to promptly provide the district to which the child moves, all relevant evaluation records;
- they are to coordinate and cooperate with the subsequent district. § 300.323(g)(2)

For the new district, if they are making sufficient progress to ensure prompt completion of the evaluation, and have agreed with the parent to a specific time when the evaluation will be completed, completion of the initial IEP timeline does not apply. Sufficient progress may be individually determined and is guided by, but not limited to such variables as:

- the amount of time between the student leaving one school and entering another;
- when the enrolling school finds out
- availability of previously initiated evaluations
- differences in assessment instruments

Districts should make good faith efforts to obtain all relevant information from the previous district, and *keep the parent informed of their progress through written Notice* **Fed. Reg. p. 46638(2006)§ 300.301(e)**

**D. Screening § 300.302; Fed Reg. p.46639 (2006)**

The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

In IDEA, an “evaluation” refers to an individual assessment to determine eligibility for special education services and programs.

A screening refers to a process that a teacher or specialist uses to determine appropriate instructional strategies. It is typically a relatively simple and quick process that can be used with groups of children. Because it is not considered an evaluation under § 300.301 through § 300.311 to determine eligibility, it does not require parental consent.

Many districts screen students before they enter kindergarten or when an older student enters a new school. If the screening is applied to all new students to assist the school in appropriate instructional strategies, then no notice or consent is required. At the point during the screening process that a school suspects the student may be a student with a disability, they have an obligation under the “basis of knowledge” language, to contact the parent

to obtain parent consent for an evaluation.

**E. Response to Research Based Interventions-Parent Notification § 300.311.(a) (7)**

If the student participated in a process that assesses the student’s response to scientific research-based intervention, the district must document that the parent was notified about:

1. The State’s policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;
2. Strategies for increasing the student’s rate of learning; and
3. The parents’ right to request an evaluation

Under the new regulations for determining the existence of a specific learning disability, the MET team must use data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction. While this process does not require parental consent, it does require notification to parents.

**§ 300.309(b)(2)**

This can be accomplished a number of ways. Some examples of activities the district could undertake:

- The district could include a statement in a district-wide or building Student Handbook that goes home to all students at the beginning of the school year or at time of enrollment.
- Many school districts and/or buildings give parents a “Curriculum Guide” or similar document which describes the instructional program, and a statement regarding scientific, research –based interventions could be included.
- It could be included in a letter given to individual parents at the time a student is referred to a Student Study Team, or when the building identifies a student which the district proposes to utilize a process of which would include the process of repeated assessments such as RtI or

**F. Evaluation Procedure  
Notification §  
300.304(a); Fed. Reg. p. 46643  
(2006)**

District must inform the parent of a student with a disability in writing, in accordance with §§ 300.300 and 300.503, a description of any evaluation procedures the agency proposes to conduct.

Multi-Tiered System of Support (MTSS).

**See MDE Notice and Consent Procedures document for more information on Parental Notice requirements for evaluations**

It is not necessary to give the parents the specific assessment tools being proposed, nor any of the specific information about the reliability or validity of specific tests being used, or the assumptions made about the assessments or the inferences that can be drawn from the test results. The information must include the types of assessments proposed based on the referral reason and may be included in a consent to evaluate form.

**IV. Review of Existing  
Evaluation Data (REED) for  
Evaluations  
§ 300.305**

**A. Evaluations**

1. There are two times when an IEP team must undertake a review of existing evaluation data to determine if the student is a student with a disability:
  - a. at a reevaluation; and
  - b. upon termination of eligibility.
  
2. In addition, the IEP team may undertake a REED at an initial evaluation, if appropriate.

For Guidance on the REED process, see MDE REED Document.

## **B. Timelines R 340.1721a**

The timeline for evaluations other than an initial evaluation is 30 school days from receipt of signed parental consent to an IEP. The timeline may be extended if agreed to by the parent and LEA, and must be in writing and measured in school days.

Timeline extensions cannot be used to extend the 36 month timeline for reevaluations or an annual IEP.

## **V. Multidisciplinary Evaluation Team (MET) R 340.1721**

There is no reference in the IDEA to multidisciplinary evaluation team (MET). In addition to the regulations described in §§ 300.301-30.311, Michigan has rules described in this section which the MET must follow in the evaluation process.

Other required team members are determined by the specific requirements as applicable to each eligibility, defined in R 340.1705 to R 240. 1716.

### **A. Suspected Disability**

1. Each student suspected of having a disability shall be evaluated by a multidisciplinary evaluation team.

#### **R 340.1721(a)(1)**

2. Multidisciplinary evaluation team means a minimum of 2 persons who are responsible for evaluating a student suspected of having a disability. The team shall include at least 1 special education teacher or other specialist who has knowledge of the suspected disability. **R340.1701b**

Other required team members are determined by the specific requirements as applicable to each eligibility, defined in R 340.1705 to R 340.1716.

**B. Requirements of MET**  
**R 340.1721(a)(2)**

1. The MET shall:

a. Complete a diagnostic evaluation

b. Make a recommendation of eligibility and prepare a written report to be presented to the IEP team by the appointed MET team member.

(1) The report shall include information needed to determine a student's present level of educational performance and educational needs of the student.

(2) Information presented to the IEP team shall be drawn from a variety of sources, including parent input

The documentation of the evaluation information may be an individual or group report.

- Evaluators should not recommend eligibility within their individual report. They should cite evidence of the behaviors which will support eligibility or rule out eligibility.
- The recommendation of eligibility should be included in a MET report to the IEP team.
- The MET report of eligibility to the IEP team could be, but not limited to:
  - A form that summarizes the conclusion of the team with individual/group reports documenting the information attached; or
  - Included in the summary of individual/ group reports. A MET cover sheet by itself does not meet the documentation requirements of IDEA (300.306(c)(1)(ii))
- The information needed to determine a student's present level of performance and educational needs should be clearly labeled in each report, summarized in the group report, or documented on a form.
- The sources of information utilized by the MET should be clearly identified and documented in the report

2. Provide a copy of the evaluation report to the parent at no cost to the parent.

**§ 300.306(a)(2)**

Evaluation reports should be shared with the parents, in a timely manner, so that parents can meaningfully participate in the IEP team process. Federal regulations do not establish any timelines for providing a copy of the evaluation report to the parents. It is good practice for districts to establish their own time frames so staff and parents have an expectation of when the reports should be given to parents. Parents can't meaningfully participate in the IEP process if they are given copies of evaluation reports moments before the IEP begins. The report needs to be given with sufficient time to allow parents the opportunity to read and formulate questions about the information that is presented to them. **Fed. Reg. §300.306(b) p.46645 (2006)**

3. A student must not be determined to be a student with a disability if the determinant factor is: § 300.306(b)

- a. Lack of appropriate instruction in reading, including the essential components of reading instruction as defined in section 1208(3) of the ESEA;
- b. Lack of appropriate instruction in math; or
- c. Limited English proficiency.

For SLD eligibility, the MET must consider, and document the use of data that demonstrated that prior to, or part of the evaluation process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel. § 300.309(b)(1). These activities would serve as documentation of the special rule for eligibility determination for all eligibility areas.

The following activities are examples of how METs could meet this requirement:

- Document that the student was provided with instruction aligned with State approved standards.
- Document the curriculum used by the district, school and/or teacher.



- Provide evidence that the lack of appropriate instruction was the source of the under achievement. **Fed. Reg. p. 46656 (2006)**
- Obtain information from parents and teachers about the curricula used and the child's progress with various teaching strategies for children who attend private for children who attend private schools or who are homeschooled. The MET also may need to use information from current classroom-based assessments or classroom observations. **Fed. Reg. p. 46656 (2006)**
- Obtain evidence that the child was provided appropriate instruction either before, or as a part of, the evaluation process. **Fed. Reg. p. 46656 (2006)**
- Use data-based documentation (an objective and systematic process of documenting a student's progress.) This type of assessment is a feature of strong instruction in reading and math and would be evidence of appropriate instruction. **Fed. Reg. p. 46657 (2006)**
- Provide evidence that the Team considered the student's language proficiency by providing results of such data as the district language screening tool upon entrance;
- Individual screening of language proficiency; results of state approved English Language Proficiency Assessment.
- Document patterns of school attendance and history of school changes with evidence

4. In determining eligibility and education need, the district must:  
§ 300.306(c)

- a. Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendation, as well as information about the child's physical condition social or cultural background and adaptive behavior; and
- b. Ensure that information obtained from all of these sources is documented and carefully considered.

of its impact on student achievement.

A MET or IEP Team must consider evaluations from outside professionals or agencies when presented with a written report by a parent. The team may consider incorporating a written report received from a professional or an outside agency as part of the MET report when considering eligibility if all four criteria are met:

- Staff have reviewed the report and the content reflects the educational needs as seen by the school; and
- Originators of the report meet Michigan requirements as a school providers and the evaluations were conducted in accordance with state and federal regulations relating to evaluations; and
- There is sufficient information for staff to write a Present Level of Academic and Functional Performance (PLAAFP) statement ; and
- The assessments were administered within one year.

If it is determined that the criteria are not met, appropriate information from the report may be included in the MET report.

A Review of Existing Evaluation Data (REED) may assist the MET in determining what additional information is needed by the MET team to make a determination of eligibility.

If an outside report from a physician or other professional establishes that the student has a disability (e.g. Other Health Impaired, Physical Impairment), then the team still must determine whether the student

requires special education and related services. The team would then make the recommendation of eligibility based on both the physician's determination of disability and the team's determination of the need for special education services.

5. Special Education personnel who are authorized to conduct evaluation of students suspected of having a disability may provide pre-referral consultation to general education personnel in accordance with procedures established by the department. **R 340.1721(a)(3)**

**C. Child with a Disability. § 300.8**

1. *Child with a disability* means a child evaluated in accordance with §§ 300.304 through 300.311 as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as "emotional disturbance"), an orthopedic impairment, autism, traumatic brain injury, another health impairment, a specific learning disability, deaf blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

2. If it is determined, through an appropriate evaluation under §§ 300.304 through 300.311, that a child has one of the disabilities identified in paragraph C,1 of this section, but only needs a related service and not special education, the child is not a child with a disability requires special education and related

3. If, consistent with § 300.39(a)(2), the related service required by the child is considered special education rather than a related service under State standards, the child would be determined to be a child with a disability under paragraph C,1 of this section.

#### **D. Dual Eligibility (Not Required)**

#### **VI Parent's Right to Request an Independent Educational Evaluation (IEE) § 300.502 R340.1723c**

(1) Each public agency shall provide parents with information about independent educational evaluations at public expense. The Information shall include all of the following:

- (a) Criteria regarding the credentials for qualified examiners.
- (b) Suggested sources and locations.
- (c) Procedures for reimbursement.
- (d) Reasonable expected costs.
- (e) Notification that the parent is not restricted to choosing from the sources suggested by the public agency.

Under MARSE, R 340.1701c(c), the definition of special education includes instructional services defined in R 340.1701b (a) and related services.

Neither the IDEA nor the MARSE addresses primary and secondary eligibility. IDEA does not require children to be identified with a particular disability category for purposes of the delivery of special education services and programs, since a child's entitlement under the IDEA is to a FAPE and not to a particular disability label. **Fed. Reg. p. 46737 (2006)**

If the parent obtains an independent educational evaluation at public expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation-

- (1) Must be considered by the public agency, if it meets the agency's criteria in any decision made with respect to the provision of FAPE to the child; and
- (2) May be presented by any party as evidence at a hearing on a due process complaint under subpart E.

(c) If a hearing officer requests an independent educational evaluation as part of a hearing on a due process complaint, the cost must be at public expense.

(2) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency. A parent is entitled to only 1 independent educational evaluation at public expense each

time the public agency conducts an evaluation with which the parent disagrees. The parent shall submit the parent's disagreement and request in written, signed and dated form. However, the public agency may initiate a hearing under R 340.1724 to show that its evaluation is appropriate. The public agency shall respond, in writing (Notice), to the request within 7 calendar days of its receipt by indicating the public agency's intention to honor the request or to initiate a hearing procedure under R 340.1724. If the hearing officer determines that the evaluation is appropriate, then the parent still has the right to an independent educational evaluation but not a public expense.

(3) The public agency shall disclose to the parent, before evaluation, whether the examiner who was contracted to provide the independent educational evaluation provides service to the public agency that are in addition to the independent educational evaluation.

(4) An independent educational evaluation shall not be conducted by an examiner or examiners who otherwise or regularly contract with the public agency to provide services, unless the examiner or examiners are agreeable to the parent.

## **VII. Additional Evaluation Procedures for Eligibility Areas under the MARSE.**

- A.** Cognitive Impairment (CI) R 340.1705
- B.** Emotional Impairment (EI) R 340.1706
- C.** Hearing Impairment (HI) R 340.1707
- D.** Visual Impairment (VI) R340.1708
- E.** Physical Impairment (PI) R 340.1709
- F.** Other Health Impairment (OHI) R 340.1709a
- G.** Speech and Language Impaired (SLI) R 340.710
- H.** Early Childhood Developmental Delay (ECDD) R. 340.1711
- I.** Specific Learning Disability (SLD) R. 340.1713 & § 340.307
- J.** Severely Multiply Impaired (SXI) R 340.1714
- K.** Autism Spectrum Disorder (ASD) R 340.1715
- L.** Traumatic Brain Injury (TBI) R340.1716
- M.** Deaf- Blindness (DB) R.340.1717

Refer to ISD or LEA Guidance Documents, MARSE and MDE Compliance Standards for eligibility criteria, required MET members for each individual disability area.