Readopt with amendment He-M 510, effective 4-26-23 (Document #10325), to read as follows:

PART He-M 510 FAMILY-CENTERED EARLY SUPPORTS AND SERVICES

Statutory Authority: RSA 171-A:18, IV; Part C of Public Law 108-446, Individuals with Disabilities Education Improvement Act (IDIEA) of 2004 (20 U.S.C. 1400 et seq.)

He-M 510.01 Purpose. In its role as designated lead agency for the implementation of federally mandated Part C of Public Law 108-446 Individuals with Disabilities Education Improvement Act (IDEIA) of 2004, 20 U.S.C. 1400 et seq., the department establishes these minimum standards for family-centered early supports and services (FCESS). These services are provided in natural environments as part of a comprehensive array of supports and services for families and their children, as defined in He-M 510.02 (g), residing throughout New Hampshire.

He-M 510.02 Definitions. The words and phrases used in these rules shall have the following meanings:

(a) "Applicant" means any person under the age of 3 whose parent requests services pursuant to He-M 510.06;

(b) "Area agency" means "area agency" as defined in RSA 171-A:2, I-b, namely, "an entity established as a nonprofit corporation in the state of New Hampshire which is established by rules adopted by the commissioner to provide services to developmentally disabled persons in the area in accordance with 42 CFR 441.301.";

(c) "Assessment" means the procedures used by personnel, as identified in He-M 510.11 (b)(1), throughout the period of a child's application and eligibility under this part to identify the child's unique strengths and needs and the services appropriate to meet those needs, and includes:

(1) A review of the multidisciplinary evaluation described in He-M 510.06 (k);

(2) Personal observations of the child; and

(3) The identification of the child's needs in each of the following areas:

a. Physical development, including vision, hearing, or both;

b. Cognitive development;

c. Communication development;

d. Social or emotional development; and

e. Adaptive development;

(d) "Assistive technology device" means any item, piece of equipment or product, whether acquired commercially "off the shelf", modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child. The term does not include medical devices that are surgically implanted, or the optimization, such as mapping, maintenance, or replacement of such devices.

(e) "At risk for substantial developmental delay" means a child is a substance-exposed newborn, or experiences 3 or more of the following, as reported by the family and documented by personnel listed in He-M 510.11 (b)(1):

(1) Documented conditions, events, or circumstances affecting the child including:

a. Birth weight less than 4 pounds;

b. Respiratory distress syndrome;

c. Gestational age less than 27 weeks or more than 44 weeks;

d. Asphyxia;

e. Infection;

f. History of abuse or neglect;

g. Prenatal drug exposure due to mother's substance abuse or withdrawal;

h. Prenatal alcohol exposure due to mother's substance abuse or withdrawal;

i. Nutritional problems that interfere with growth and development;

j. Intracranial hemorrhage grade III or IV; or

k. Homelessness; or

(2) Documented conditions, events, or circumstances affecting a parent, including:

a. Developmental disability;

b. Psychiatric disorder;

c. Family history of lack of stable housing;

d. Education less than 10th grade;

e. Social isolation;

f. Substance misuse or abuse;

g. Age of either parent less than 18 years;

h. Parent and child interactional disturbances; or

i. Founded child abuse or neglect as determined by a district court pursuant to RSA 169-C:21;

(f) "Atypical behavior" means behavior reported by the family and documented by personnel listed in He-M 510.11 (b)(1) that includes one or more of the following:

(1) Extreme fearfulness or other modes of distress that do not respond to comforting by caregivers;

(2) Self-injurious or extremely aggressive behaviors;

(3) Extreme apathy;

(4) Unusual and persistent patterns of inconsolable crying, chronic sleep disturbances, regressions in functioning, absence of pleasurable interest in adults and peers, or inability to communicate emotional needs; or

(5) Persistent failure to initiate or respond to most social situations;

(g) "Child" means an infant or toddler with a disability who is under 3 years of age and:

(1) Is at risk for or has a developmental delay;

(2) Exhibits atypical behavior; or

(3) Has an established condition;

(h) "Commissioner" means the commissioner of the New Hampshire department of health and human services or their designee;

(i) "Consent" means that:

(1) The parent has been fully informed, in the parent's native language or other mode of communication, of all information relevant to the activity for which approval is sought;

(2) The parent understands and agrees to, in writing, the carrying out of the activity for which the parent's approval is sought;

(3) The written approval describes the approved activity and lists the records, if any, that will be released and to whom; and

(4) The parent understands that the granting of approval is voluntary on the part of the parent, can be revoked at any time, and that revocation of approval is not retroactive;

(j) "Department" means the New Hampshire department of health and human services;

(k) "Developmental delay" means that a child has a 33% delay in one or more of the following areas as determined through completion of the multidisciplinary evaluation pursuant to He-M 510.06 (k):

(1) Physical development, including vision, hearing, or both;

(2) Cognitive development;

(3) Communication development;

(4) Social or emotional development; or

(5) Adaptive development;

(l) "Division for Children, Youth and Families (DCYF)" means the organizational unit of the department of health and human services that provides services to children and youth referred by courts pursuant to RSA 169-A, RSA 169-B, RSA 169-C, RSA 169-D, and RSA 463;

(m) "Early intervention specialist" means an individual certified by the bureau in accordance with the criteria in He-M 510.11 (k)-(m);

(n) "Established condition" means that a child has a diagnosed physical or mental condition that has a high probability of resulting in a developmental delay, even if no delay exists at the time of referral, as

documented by the family and personnel listed in He-M 510.11 (b)(1), including, at a minimum, conditions such as:

(1) Chromosomal anomaly or genetic disorder;

(2) Inborn errors of metabolism;

(3) A congenital malformation;

(4) A severe infectious disease;

(5) A neurological disorder;

(6) A sensory impairment;

(7) A severe attachment disorder;

(8) Fetal alcohol spectrum disorder;

(9) Lead poisoning; or

(10) Toxic exposure;

(o) "Family-centered early supports and services (FCESS)" means a wide range of activities and assistance, based on peer-reviewed research to the extent practicable, that develops and maximizes the family's and other caregivers' ability to care for the child and to meet the child's needs in a flexible manner;

(q) "Family-centered early supports and services (FCESS) program" means a program under contract with the department to provide FCESS as defined in these rules;

(r) "Family support council" means the regional council established pursuant to RSA 126-G:4;

(s) "Foster parent" means a person with whom a child lives and who is licensed pursuant to He-C 6446 and certified pursuant to He-C 6347;

(t) "Frequency and intensity" means the number of days or sessions a service will be provided and whether the service will be provided on an individual or group basis;

(u) "Homeless children" means children under the age of 3 years who meet the definition given the term "homeless children and youths" in section 725 (42 U.S.C. 11434a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. 11431 et seq;

(v) "Individualized family support plan (IFSP)" means a written plan developed in accordance with He-M 510.07 for providing supports and services to an eligible child and family;

(w) "Informed clinical opinion" means the conclusion of a professional identified pursuant to He-M 510.11 (b)(1) based on:

(1) Parent observations of the child as reported to the professional;

(2) Parent reports of the child's developmental history;

(3) The professional's multiple and direct observations of the child at home or in other community settings;

(4) The professional's review of pertinent records related to the child's current health status and medical history; and

(5) Formal measures of the child's activities and interactions with others;

(x) "Length" means the period of time the service is provided during each session of that service;

(y) "Local education agency (LEA)" means "local education agency" as defined in Ed 1102.03 (n);

(z) "Medical home" means a model of delivering primary care that is accessible, continuous, comprehensive, family-centered, coordinated, compassionate, and culturally effective;

(aa) "Method" means how a service is provided;

(ab) "Multidisciplinary" means the involvement of 2 or more individuals from separate disciplines or professions;

(ac) "Native language" means:

(1) The language normally used by the parent of the child in the home; or

(2) For a child with deafness or blindness, or for a family with no written language, the mode of communication normally used by the child and family such as sign language, Braille, or oral communication;

(ad) "Natural environment" means places and situations where the child's age peers without disabilities live, play, and grow;

(ae) "Natural supports" means people including but not limited to family, relatives, friends, neighbors, childcare providers, clergy, and social groups such as religious organizations, co-workers, and social clubs, available to provide assistance as part of everyday living as well as during critical events;

(af) "Notification" means referral of a child to the LEA and the NH department of education;

(ag) "Parent" means:

(1) A biological or adoptive parent of a child; or

(2) As identified in a judicial decree or when the biological or adoptive parent does not have legal authority to make educational or FCESS decisions on behalf of the child:

a. A guardian authorized to act as the child's parent, or authorized to make early intervention, educational, health, or developmental decisions for the child, but not the state if the child is in the custody of the New Hampshire division for children, youth, and families;

b. A foster parent as defined in (s) above;

c. An individual acting in the place of a biological or adoptive parent, including a grandparent, stepparent, or other relative with whom the child lives;

d. A surrogate parent as defined in (aq) below; or

e. Any other individual who is legally responsible for the child's welfare;

(ah) "Personally identifiable information" means:

(1) The name of the parent(s);

(2) The name of the child or other family members;

(3) The address of the child;

(4) A personal identifier such as the parent or child's social security number; or

(5) A list of personal characteristics, or other information that would make it possible to identify the child or family with reasonable certainty;

(ai) "Potentially eligible" means that an estimation has been made by the IFSP team, as described in He-M 510.07 (c), that a child might be eligible to receive preschool special education services from the child's LEA;

(aj) "Provider" means a person receiving any form of remuneration for the provision of services to a child or family applying for or receiving FCESS under He-M 510;

(ak) "Record" means, in accordance with the Family Educational Rights and Privacy Act (FERPA) and 34 CFR 99.3, any information recorded in any way including, but not limited to:

(1) Handwriting;

(2) Print;

(3) Computer media;

(4) Video or audio tape;

(5) Email;

(6) Text message; and

(7) Any other electronically stored information;

(al) "Region" means a geographic area designated pursuant to He-M 505.04 for the purpose of providing services to individuals with developmental disabilities and their families;

(am) "Scientifically-based research" means "scientifically-based research" as defined in the Elementary and Secondary Education Act (ESEA), Title IX, Part A, section 9101(37) and 20 U.S.C. 7801(37);

(an) "Service coordinator" means a person who:

(1) Is chosen or approved by the parent of the child;

(2) Is identified in He-M 510.11(b);

(3) Together with the family has the responsibility of planning, accessing, coordinating, and monitoring the delivery of services for an eligible child's and family; and

(4) Possesses experience relevant to carrying out applicable responsibilities for the child and family's needs under He-M 510;

(ao) "Setting" means the actual place(s) the services will be provided;

(ap) "Substance-exposed newborn" means "substance-exposed newborn" as defined in RSA 171-A:18-a, namely, "a newborn who was exposed to alcohol, or other drugs in utero, which may have adverse

effects, whether or not this exposure is detected at birth through a drug screen or withdrawal symptoms.”; and

(aq) “Surrogate parent” means a person who:

(1) Is appointed by the lead agency;

(2) Is trained by the lead agency regarding FCESS; and

(3) Acts as a child’s advocate in the FCESS decision-making process, including the transition to Part B services, in place of the child’s:

a. Biological parents;

b. Adoptive parents; or

c. Guardian.

He-M 510.03 Family-Centered Support and Service Categories.

(a) Assistive technology services shall directly assist a child in the selection, acquisition, or use of an assistive technology device, including:

(1) The evaluation of the needs of a child, including a functional evaluation of the child in the child’s customary environment;

(2) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by the family;

(3) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(4) Coordinating and using other therapies, interventions, supports, or services with assistive technology devices, such as those associated with existing IFSPs;

(5) Training or technical assistance for a child or, if appropriate, that child’s family; and

(6) Training or technical assistance for professionals, including persons providing FCESS and other persons who provide services to, or are otherwise substantially involved in the major life functions of, children.

(b) Audiology services shall include:

(1) Identification of children with auditory impairments, using at risk criteria and appropriate audiologic screening techniques;

(2) Determination of the range, nature, and degree of hearing loss and communication functions, by use of audiological evaluation procedures;

(3) Referral for medical and other services necessary for the habilitation or rehabilitation of children with auditory impairment;

(4) Provision of auditory training, aural rehabilitation, speech reading, and listening device orientation and training, and other services;

(5) Provision of services for prevention of hearing loss; and

(6) Determination of the child’s need for individual amplification, including selecting, fitting, and dispensing appropriate listening and vibrotactile devices, and evaluating the effectiveness of those devices.

(c) Family training, counseling, and home visits shall include assistance to the family in understanding the special needs and building on the interests of the child and enhancing the child’s development.

(d) Health services shall include services necessary to enable a child to benefit from the other FCESS under He-M 510 during the time that the child is eligible to receive other FCESS, including:

(1) Such services as clean intermittent catheterization, tracheotomy care, tube feeding, the changing of dressings or colostomy collection bags, and other health services; and

(2) Consultation by physicians with other FCESS providers concerning the special health care needs of children that will need to be addressed in the course of providing other FCESS.

(e) Health services shall not include:

(1) Services that are surgical in nature, such as cleft palate surgery, surgery for club foot, or the shunting of hydrocephalus;

(2) Services that are purely medical in nature, such as hospitalization for management of congenital heart ailments or the prescribing of medicine or drugs for any purpose;

(3) Services related to the implementation, maintenance, replacement, or optimization, such as mapping, of a medical device that is surgically implanted, including cochlear implants;

(4) Devices such as heart monitors, respirators and oxygen, and gastrointestinal feeding tubes and pumps necessary to control or treat a medical condition; or

(5) Medical-health services, such as immunizations and regular “well baby” care, that are routinely recommended for all children.

(f) Nothing in He-M 510 shall:

(1) Limit the right of a child who has a surgically implanted device, such as a cochlear implant, to receive the early supports and services that are identified in the child’s IFSP as necessary to meet the child’s developmental outcomes; or

(2) Prevent the provider from routinely checking that either the hearing aid or the external components of a surgically implanted device, such as a cochlear implant, of a child are functioning properly.

(g) Medical services shall include services provided by a licensed physician for diagnostic or evaluation purposes to determine a child’s developmental status and need for FCESS.

(h) Nursing services shall include:

(1) The assessment of a child’s health status for the purpose of providing nursing care, including the identification of patterns of human response to actual or potential health problems;

(2) Provision of nursing care to prevent health problems, restore or improve functioning, and promote optimal health and development; and

(3) The administration of medications, treatments, and regimens prescribed by a licensed physician or an advanced practice registered nurse (APRN) in accordance with RSA 326-B:11, III.

(i) Nutrition services shall include:

(1) Conducting individual assessments in:

a. Nutritional history and dietary intake;

b. Anthropometric, biochemical, and clinical variables;

c. Feeding skills and feeding problems; and

d. Food habits and preferences;

(2) Developing and monitoring appropriate plans to address the nutritional needs of children based on the findings in (i)(1) above; and

(3) Making referrals to appropriate community resources to carry out nutrition goals.

(j) Occupational therapy shall be services that:

(1) Address the functional needs of a child related to adaptive development, adaptive behavior and play, and sensory, motor, and postural development;

(2) Are designed to improve the child's functional ability to perform tasks in home, school, and community settings; and

(3) Include:

a. Identification, assessment, and provision of needed supports and services;

b. Adaptation of the environment and selection, design, and fabrication of assistive and orthotic devices to facilitate development and promote the acquisition of functional skills; and

c. Prevention or minimization of the impact of initial or future impairment, delay in development, or loss of functional ability.

(k) Physical therapy shall be services that:

(1) Address the promotion of sensorimotor function through enhancement of:

a. Musculoskeletal status;

b. Neurobehavioral organization;

c. Perceptual and motor development;

d. Cardiopulmonary status; and

e. Effective environmental adaptation; and

(2) Include:

a. Screening, evaluation, and assessment of children to identify movement dysfunction;

b. Obtaining, interpreting, and integrating information to prevent, alleviate, or compensate for movement dysfunction and related functional problems; and

c. Providing individual and group services to prevent, alleviate, or compensate for movement dysfunction and related functional problems.

(l) Preventative and diagnostic services shall be early and periodic screening, diagnosis, and treatment services as specified in He-W 546.05 (a) and (b).

(m) Psychological services shall include:

(1) Administering psychological and developmental tests and other assessment procedures;

(2) Interpreting assessment results;

(3) Obtaining, integrating, and interpreting information about child behavior and child and family conditions related to learning, mental health, and development; and

(4) Planning and managing a program of psychological services, including:

a. Psychological counseling for children and parents;

b. Family counseling;

c. Consultation on child development;

d. Parent training; and

e. Education programs.

(n) Service coordination shall:

(1) Be services provided by a service coordinator to assist and enable a child and the child's family to receive the services and rights, including procedural safeguards, required under this part, He-M 203, and He-M 310;

(2) Be an active, ongoing process that involves:

a. Assisting parents of children in gaining access to, and coordinating the provision of, the FCESS required under this part; and

b. Coordinating the other services identified in the IFSP that are needed by, or are being provided to, the child and that child's family; and

(3) Include:

a. Coordinating all services required under this part across agency lines;

b. Serving as the single point of contact for carrying out the activities described in c. – l. below;

c. Assisting parents of children in obtaining access to needed supports and services and other services identified in the IFSP, including making referrals to providers for needed services and scheduling appointments for children and their families;

d. Coordinating the provision of FCESS and other services, such as educational, social, and medical services that are not provided for diagnostic or evaluative purposes, that the child needs or are being provided;

e. Coordinating evaluations and assessments;

f. Facilitating and participating in the development, review, and evaluation of IFSPs;

g. Conducting referral and other activities to assist families in identifying available providers;

h. Coordinating, facilitating, and monitoring the delivery of services required under this part to ensure that the services are provided in a timely manner;

i. Conducting follow-up activities to determine that appropriate services are being provided;

j. Informing families of their rights and procedural safeguards, as set forth in He-M 203 and He-M 310, and related resources, including organizations with their addresses and telephone numbers that might be available to provide legal assistance and advocacy, such as the Disabilities Rights Center, Inc. and NH Legal Assistance;

k. Coordinating the funding sources for services required under this part; and

l. Facilitating the development of a transition plan to preschool, school, or, if appropriate, to other services.

(o) Use of the term "service coordination" or "service coordination services" by an FCESS program or provider shall not preclude characterization of the services as case management or any other service that is covered by another payor of last resort, such as Title XIX of the Social Security Act—Medicaid, for purposes of claims in compliance with the requirements of 34 CFR 303.501 through 303.521.

(p) Sign language and cued language services shall include:

(1) Teaching sign language, cued language, and auditory and oral language;

(2) Providing oral transliteration services, such as amplification; and

(3) Providing sign and cued language interpretation.

(q) Social work services shall include:

(1) Home visits to evaluate a child's living conditions and patterns of parent-child interaction;

(2) Preparing a social or emotional developmental assessment of the child within the family context;

(3) Providing individual and family counseling with parents and other family members and appropriate social skill building activities with the child and parents;

(4) Working with the family to resolve problems in the family's living situation, home, or community that affect the child's and family's maximum utilization of FCESS; and

(5) Identifying, mobilizing, and coordinating community resources and services to enable the child and family to receive maximum benefit from FCESS.

(r) Special instruction shall include:

(1) Designing learning environments and activities that promote the child's acquisition of skills in a variety of developmental areas, including cognitive processes and social interaction;

(2) Curriculum planning, including the planned interaction of personnel, materials, and time and space, that leads to achieving the outcomes in the IFSP;

(3) Providing families with information, skills, and support related to enhancing the skill development of the child; and

(4) Working with the child to enhance the child's development.

(s) Speech-language pathology services shall include:

(1) Identification of children with communicative or language disorders and delays in development of communication skills, including the diagnosis and appraisal of specific disorders and delays in those skills;

(2) Referral for medical or other professional services necessary for the habilitation or rehabilitation of children with communicative or language disorders and delays in development of communication skills; and

(3) Provision of services for the habilitation, rehabilitation, or prevention of communication or language disorders and delays in development of communication skills.

(t) Transportation services shall include reimbursing the family for the cost of travel such as mileage, or travel by taxi, common carrier, or other means, and other related costs such as tolls and parking expenses, that are necessary to enable an eligible child and the child's family to receive FCESS.

(u) Vision services shall include:

(1) Evaluation and assessment of visual functioning, including the diagnosis and appraisal of specific visual disorders, delays, and abilities that affect early childhood development;

(2) Referral for medical or other professional services necessary for the habilitation or rehabilitation of visual functioning disorders, or both; and

(3) Communication skills training, orientation and mobility training for all environments, visual training, independent living skills training, and additional training necessary to activate visual motor abilities.

(v) The services and personnel identified and defined in (a)-(u) above shall not comprise exhaustive lists of the types of services that may constitute FCESS or the types of qualified personnel that may provide FCESS. Nothing in this section shall prohibit the identification in the IFSP of another type of service as an FCESS provided that the service meets the criteria in He-M 510.04.

(w) Children and families who qualify for services under He-M 510 may have access to respite services under He-M 513 and He-M 519 as well as other services authorized by the department that meet the intent and purpose and are consistent with evidence-based nationally recognized treatment standards.

He-M 510.04 Provision of Supports and Services.

(a) FCESS shall:

(1) Be selected in collaboration with parents and provided under public supervision by personnel qualified pursuant to He-M 510.11;

(2) Be provided under the system of payment described in He-M 510.14;

(3) Include those of the services listed in He-M 510.03 (a)-(u), and other services provided by personnel identified in He-M 510.11 (b), that meet the developmental needs of the child and family and enhance the child's development;

(4) Comply with state laws regulating the professional practice of persons providing services, as well as the requirements of Part C of the IDEIA;

(5) To the maximum extent appropriate, be provided in natural environments; and

(6) Be provided in conformity with an IFSP.

(b) FCESS shall be provided in a variety of natural environments where children and families of the community gather, such as:

(1) The family's own home;

(2) Neighborhood playgrounds;

(3) Child care settings;

(4) Foster placements;

(5) Relatives' or friends' homes;

(6) Libraries;

(7) Recreational programs;

(8) Places of worship;

(9) Grocery stores;

(10) Shopping malls; and

(11) Other similar settings.

(c) FCESS shall incorporate the concerns, priorities, and resources of the family to:

(1) Identify and promote the use of natural supports as a principal way of assisting in the development of the child, including supports from:

a. Relatives;

b. Friends;

c. Neighbors;

d. Co-workers; and

e. Cultural, ethnic, or religious organizations;

(2) Foster the family's capacity to make decisions and provide care and learning opportunities for their child;

(3) Respect the cultural and ethnic beliefs and traditions, and the personal values and lifestyle of the family;

(4) Respond to the changing needs of the family and to critical transition points in the family's life; and

(5) Facilitate access to community resources to support families and link them with other families with similar concerns and interests.

(d) FCESS shall include training, support, evaluation, special instruction, and therapeutic services that maximize the family's and other caregivers' ability to understand and care for the child's developmental, functional, medical, and behavioral needs at home as well as in settings described in (b) above.

(e) FCESS to the child and family and other caregivers shall be founded on scientifically-based research to the extent practicable, and include assistance in the following areas as identified in the family's IFSP:

(1) Understanding the child's special needs;

(2) Support and counseling for families;

(3) Management and coordination of health and medical issues in collaboration with the primary physician or medical home;

(4) Enhancement of the cognitive, social interactive, and play competencies of the child at home and in community settings;

(5) Enhancement of the ability of the child to develop age-appropriate fine and gross motor skills and overall sensory and physical awareness and development;

(6) Enhancement of the ability of the child to develop functional communication methods and expressive and receptive language skills;

(7) Guidance and management of a child with very active, inappropriate, or life-threatening behaviors;

(8) Consultation regarding appropriate diet and the child's eating and oral motor skills to insure proper nutrition;

(9) Linkage with assistive technology services that might enhance the child's growth and development; and

(10) Assessments conducted throughout the period of the child's eligibility.

(f) FCESS shall promote local and statewide prevention efforts to reduce and, where possible, eliminate the causes of disabling conditions.

He-M 510.05 Parents' Right to Written Prior Notice.

(a) FCESS programs shall give written notice to families before proposing, refusing to initiate, or changing the eligibility for, evaluation regarding, or provision of FCESS.

(b) The written notice referenced in (a) above shall be provided, at a minimum, prior to:

(1) Eligibility evaluations;

(2) IFSP development;

(3) IFSP reviews;

(4) Changes in IFSP services;

(5) The transition planning conference; and

(6) Notification pursuant to He-M 510.09 (f), (g), and (j).

(c) The written notice referenced in (a) above shall contain the following information:

(1) The proposed date and time of the action;

(2) The action that is being proposed or refused;

(3) The reasons for taking the action;

(4) All procedural safeguards that are available under He-M 510, He-M 203, and He-M 310; and

(5) A summary of the FCESS complaint resolution procedures set forth in He-M 203, including a description of how to file a state administrative complaint and due process complaint and the timelines under these procedures.

(d) The proposed date and time of the action in (c) above shall be timely and convenient to the family.

(e) The notice shall be written in language that is understandable to the general public and in the family's native language or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(f) If the native language or the other mode of communication of the parent is not a written language, the area agency or FCESS program shall take steps to ensure:

(1) The notice is translated orally, or by other means to the parent in the parent's native language, or other mode of communication;

(2) The parent understands the notice; and

(3) There is written evidence that the requirements of (1)-(2) above have been met.

He-M 510.06 Referral and Eligibility Determination.

(a) A child as defined in He-M 510.02(g), who is a resident of New Hampshire shall be eligible for FCESS.

(b) Any person may make a referral to FCESS.

(c) When a referral is made by someone other than the parent, the FCESS program shall notify the parent immediately both verbally and in writing.

(d) Participation in FCESS shall be voluntary.

(e) The point of contact for referral to FCESS shall be the area agency.

(f) An area agency shall designate an intake coordinator to make initial contact with families who are referred for FCESS.

(g) The intake coordinator shall:

(1) Have at least 2 years' experience with children and their families;

(2) Demonstrate the capacity to develop rapport with families;

(3) Have knowledge of resources available in the community; and

(4) Act as an interim service coordinator for families applying for FCESS until eligibility is determined and a service coordinator identified.

(h) The intake coordinator shall:

(1) Document the date the referral was received;

(2) Provide information relative to FCESS and other community services;

(3) Inform the family of the process for the initiation of FCESS, including the family's rights under He-M 510 and He-M 310 and procedural safeguards under He-M 203;

(4) If the family decides to seek a determination of eligibility for FCESS:

a. Obtain parental consent for the initial evaluation and, if the applicant is eligible, IFSP development;

b. Request a release to obtain the applicant's medical records and a physician's referral for evaluation;

c. Request information about the applicant's insurance, including public and private insurance; and

d. Request consent to utilize private insurance pursuant to He-M 510.14 (b)-(f); and

(5) If the family decides not to seek a determination of eligibility for FCESS, make reasonable efforts to ensure the parent:

a. Is fully aware of the nature of the evaluation, the assessment, and the services that would be available; and

b. Understands that the applicant will not be able to receive the evaluation, the assessment, or other services unless consent is given pursuant to (4)a. above.

(i) If a family decides to seek a determination of eligibility for FCESS, the area agency shall conduct a multidisciplinary evaluation pursuant to (k) below and a family directed assessment.

(j) The purpose of the multidisciplinary evaluation shall be:

(1) To determine if the applicant is eligible for FCESS according to (a) above and He-M 510.02 (g); and

(2) To provide information that will form the basis of the IFSP if the applicant is eligible for FCESS.

(k) The multidisciplinary evaluation shall:

(1) Be based on informed clinical opinion;

(2) Be conducted by an evaluation team composed of the family, other persons requested by the family, and professionals from 2 or more different disciplines identified in He-M 510.11 (b)(1);

(3) Be conducted by professionals whose expertise most closely relates to the needs of the applicant and family;

(4) Be carried out in a setting that is convenient to the family;

(5) Include the completion of the IDA Institute's "Infant-Toddler Developmental Assessment-2 (IDA-2)", (Second Edition) or Shine Early Learning's "Hawaii Early Learning Profile (HELP) Strands 0–3" (1992–2013), available as noted in Appendix A;

(6) Include the components of the assessment as defined in He-M 510.02 (c);

(7) Include the applicant's medical and developmental history;

(8) Include information from others sources such as family members, other caregivers, medical providers, social workers, and educators, if necessary;

(9) Include a review of the applicant's medical, educational, or other records;

(10) Include an evaluation of the applicant's level of functioning in each of the following developmental domains:

a. Physical development, including vision, hearing, or both;

b. Cognitive development;

c. Communication development;

d. Social or emotional development; and

e. Adaptive development;

(11) Determined through the use of an assessment tool and a voluntary family-directed personal interview, include identification of:

a. The family's resources, priorities, and concerns; and

b. The supports and services necessary to enhance the family's capacity to meet the developmental needs of the applicant;

(12) Be conducted to:

a. Determine an applicant's eligibility or a child's progress;

b. Define or redefine services and expected outcomes; or

c. Plan for future needs;

(13) Be conducted in the applicant's, child's, or family's native language if determined by qualified personnel conducting the evaluation to be developmentally appropriate, given the applicant's or child's age and communication skills; and

(14) Be selected and administered so as not to be racially or culturally discriminatory.

(l) An applicant's medical and other records may be used to establish eligibility prior to conducting a multidisciplinary evaluation if those records contain information regarding the applicant's level of functioning in the developmental areas identified in (k)(10) above.

(m) Based on the results of the multidisciplinary evaluation pursuant to (k) above or medical records in (l) above, the evaluation team shall determine whether the applicant is a child as defined in He-M 510.02 (g) and is eligible for FCESS pursuant to (a) above.

(n) If the applicant is found eligible for FCESS, the area agency shall, in writing, advise the family of its eligibility status within 3 business days and include the name of, and contact information for, the service coordinator.

(o) If the applicant is found eligible based upon medical records in (l) above, the area agency shall do an assessment of the child and a family assessment as described in (k)(11) above.

(p) If the applicant is found not eligible for FCESS, the area agency shall, in writing, advise the family within 3 business days from date of eligibility determination pursuant to He-M 510.05 of the following:

(1) The findings of the evaluation and recommendations;

(2) Other specific supports and services that meet the needs of the family, including parent-to-parent networks, and an explanation of how to access those supports and services;

(3) The family's right to file a complaint pursuant to He-M 203; and

(4) The names, addresses, and telephone numbers of advocacy organizations, such as the Disabilities Rights Center, Inc., that the family can contact for assistance in challenging the determination.

(q) In the event of exceptional family circumstances that make it impossible to complete the initial evaluation and develop the IFSP within 45 calendar days of the referral, the FCESS program shall:

(1) Document the specific circumstances of the delay;

(2) Complete the multidisciplinary evaluation as soon as family circumstances allow;

(3) Proceed pursuant to (m)-(p) above; and

(4) Develop and implement an interim IFSP, to the extent appropriate and consistent with He-M 510.07 (a) and (g).

(r) Continued eligibility shall be determined as noted in He-M 510.08 (e) and (f).

He-M 510.07 Initial and Annual IFSP Development.

(a) With parental consent, FCESS may begin prior to the completion of the multidisciplinary evaluation if an interim IFSP is in place that contains the name of the service provider responsible for the interim services and a description of the services needed immediately and the elements described in (h)

below. Such an interim IFSP shall not preclude the requirement in (b) below of completing the multidisciplinary evaluation and developing a full IFSP within 45 calendar days from the initial date of the referral.

(b) For a child who has been evaluated for the first time and determined to be eligible, a meeting to complete the initial IFSP shall be conducted within 45 calendar days from the initial date of referral received by the IFSP team, described in (c) below.

(c) The IFSP team shall be multidisciplinary and include the following participants:

(1) The parent(s);

(2) The service coordinator;

(3) The person or persons directly involved in conducting the evaluation or assessment;

(4) Providers, as appropriate; and

(5) As requested by the parent:

a. Other family members; and

b. An advocate, or person outside the family.

(d) The initial IFSP meeting shall be held at a time and place mutually agreed upon by the IFSP team and convenient for the family.

(e) At all IFSP team meetings, including reviews required pursuant to He- M 510.08(d), if the person or persons identified in (c)(3) above is unable to attend, the FCESS program shall make arrangements for their involvement through other means including:

(1) Participating in telephone or virtual conference call;

(2) Having a knowledgeable authorized representative attend the meeting; or

(3) Making pertinent records available at the meeting.

(f) All IFSP team meetings shall be conducted in the native language of the family or other mode of communication used by the family, unless it is clearly not feasible to do so.

(g) The IFSP shall be based on the results of the multidisciplinary evaluation.

(h) The IFSP shall include:

(1) Information about the child's status in the domains noted in He-M 510.06 (k)(10);

(2) To the extent the family agrees, a statement of the family's concerns, priorities, and resources related to enhancing the family's capacity to meet the developmental needs of the child;

(3) A statement of the measurable results or measurable outcomes expected to be achieved for the child and family, including pre-literacy and language skills as developmentally appropriate for the child;

(4) The criteria, procedures, and timelines used to determine the degree to which progress toward achieving the outcomes is being made and whether modifications or revisions of the expected results, outcomes, or services are necessary;

(5) A detailed statement of the specific FCESS that are necessary to meet the unique needs of the child and family to achieve the outcomes identified in the IFSP;

(6) The length, frequency, intensity, anticipated duration, method of delivery, location, and payment arrangement, if any, for each support and service;

(7) A statement that each FCESS is provided in the natural environment for that child to the maximum extent appropriate;

(8) Identification of the natural environments in which the FCESS will be provided;

(9) A justification of the extent, if any, as to why a support or service cannot be provided in a natural environment, including:

a. An explanation of why the supports or services cannot be provided satisfactorily for the child in a natural environment;

b. A plan of action that identifies how supports and services can be provided in a natural environment in the future; and

c. A time frame in which this plan will be implemented;

(10) A summary of the documented medical services such as hospitalization, surgery, medication, and other supports that the child needs or is receiving through other sources but that are neither required nor funded under He-M 510;

(11) For services described in (10) above that are not currently being provided, a description of the steps the service coordinator or family can take to assist the child and family in securing and funding those other services;

(12) The name(s) and credentials of the person(s) responsible for implementing the supports and services;

(13) The earliest possible projected start date for each support and service as agreed upon by the IFSP team, including the family;

(14) The name, telephone number, agency, and location of the service coordinator;

(15) The names of the members of the IFSP team participating in the development of the plan;

(16) The steps to be taken to support the transition described in He-M 510.09, including:

a. Discussions with, and training of, parents, as appropriate, regarding future placements and other matters related to the child's transition;

b. Procedures to prepare the child for changes in service delivery, including steps to help the child adjust to, and function in, a new setting;

c. Confirmation that child find system information, in accordance with 34 CFR 303.115, 303.302, and 303.303, about the child has been transmitted to the LEA or other relevant agency in accordance with He-M 510.09 (f) and (g); and

d. Identification of transition services and other activities that the IFSP team determines are necessary to support the transition of the child; and

(17) Services to be provided to support the smooth transition of the child in accordance with He-M 510.09 to:

a. Preschool special education services to the extent that those services are appropriate; or

b. Other appropriate services.

(i) The steps and services referred to in (h)(16)-(17) above shall be listed in a document called a transition plan as described in He-M 510.09 (a).

(j) Through discussion, all IFSP team members shall consider the advantages and disadvantages of each FCESS suggested during the development of the IFSP.

(k) The FCESS program shall explain the contents of the IFSP to the family prior to the family consenting to the document.

(l) Parents may elect to provide consent with respect to some FCESS and withhold consent for others.

(m) Parents may withdraw consent for some services without jeopardizing other FCESS.

(n) The IFSP shall be considered complete when the family has given consent by signing the IFSP.

(o) The following services shall be provided to each child at public expense at no cost to the parent:

(1) Implementing child find system requirements in accordance with 34 CFR Part 303.115, 303.302, and 303.303;

(2) Evaluation and assessment;

(3) Service coordination;

(4) Development, review, and evaluation of IFSPs; and

(5) Implementation of procedural safeguards available under He-M 203 and Part C of Public Law 102-119, Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq.

(p) A meeting shall be conducted by the IFSP team, described in (c) above, on at least an annual basis to evaluate and revise, as appropriate, the IFSP for the child and the child's family, according to the following:

(1) The annual IFSP meeting shall be held at a time and place mutually agreed upon by the IFSP team and convenient for the family; and

(2) The results of any current evaluations or current assessments of the child shall be used in determining the early intervention services that are needed or provided.

He-M 510.08 Implementation of the IFSP.

(a) FCESS shall be delivered as agreed upon in the IFSP.

(b) In addition to arranging direct supports and services for the child and parents or primary caregivers, the service coordinator shall link the child and family with community resources identified in the IFSP.

(c) Each IFSP shall be reviewed periodically at least once every 6 months, or more frequently if a provider proposes adding or discontinuing a support or service or if requested by the family.

(d) Such a review shall:

(1) Include:

a. The parent(s);

b. The service coordinator;

c. If requested, other family members, advocates, and persons outside the family; and

d. Other members of the IFSP team as described in He-M 510.07 (c) and (e) if changes to increase or reduce services in the IFSP are proposed;

(2) Be arranged at a mutually agreed upon time and location; and

(3) Employ a process that is convenient to the family.

(e) The review pursuant to (c)-(d) above shall:

(1) Assess progress toward achieving outcomes;

(2) Determine if the FCESS in the IFSP continue to be appropriate;

(3) Determine whether revisions or additions are needed to the IFSP; and

(4) Discuss continued eligibility for FCESS.

(f) At the review, if the IFSP team is in disagreement regarding the child's continued eligibility, the FCESS program shall conduct a multidisciplinary evaluation following the process described in He-M 510.06 (k).

(g) At any time, the IFSP team, including the family, may request a multidisciplinary evaluation or an assessment to determine progress review eligibility, redefine services and outcomes, or plan for future needs.

(h) Before implementation of any revision, deletion, or addition to the IFSP, the family shall give consent and sign the revised IFSP. If the family does not give consent, the IFSP shall remain unchanged.

(i) If the family has any concerns with the implementation of the IFSP, the family or the service coordinator may request a meeting. Such a meeting shall be held as soon as possible at a mutually determined time and location that is convenient to the family and include the family, the service coordinator, and others as requested who are involved in providing supports and services to the family and child.

(j) If the family's concerns are not being addressed to the family's satisfaction, the procedural safeguards for FCESS identified in He-M 203 shall be made available.

He-M 510.09 Transition to Special Education Preschool and Other Services.

(a) For all children found eligible for FCESS prior to 33 months of age, the service coordinator shall convene the IFSP team when the child is between 27 and 32 months to develop a transition plan for the child to exit the program that:

(1) Reviews the child's program options for the period from the child's 3rd birthday through the remainder of the school year;

(2) Identifies steps for the child and the child's family to exit the FCESS program;

(3) Identifies any transition services needed by the child and family;

(4) Includes, with parental consent, referrals to the area agency and other community resources; and

(5) Determines if the child is potentially eligible for preschool special education.

(b) If the child is determined to not be potentially eligible for preschool special education services, the service coordinator shall convene a transition conference and make reasonable efforts to include providers of other services to discuss appropriate services the child might receive.

(c) If the child is determined to be potentially eligible for preschool special education services, the service coordinator shall provide parents information describing the notification requirement in (f) and (g) below and their right to object, in (d) below, to information about their child being provided to the responsible LEA and the NH department of education.

(d) If a parent informs the FCESS program in writing within 7 calendar days of receiving the information described in (c) above that they object to the notification, the service coordinator shall not provide notification to the responsible LEA and NH department of education.

(e) If the parent objects to notification, the service coordinator shall convene a transition conference and make reasonable efforts to include providers of other services to discuss alternative ways of meeting the child's needs.

(f) If the parent does not inform the FCESS program within 7 calendar days, as specified in (d) above, that they object, the FCESS program shall refer the child by notifying the responsible LEA and NH department of education as soon as possible but not less than 90 calendar days before the child reaches their 3rd birthday that a child who is potentially eligible for special education is receiving FCESS.

(g) Information provided with the notification and referral described in (f) above shall include:

(1) The child's name;

(2) The child's date of birth;

(3) The parents' names;

(4) The parents' contact information including addresses and telephone numbers; and

(5) Additional information with parental consent including a copy of the most recent evaluation and assessments of the child and the most recent IFSP.

(h) After the LEA and NH department of education have been notified that a child is potentially eligible for services, the service coordinator shall convene a transition conference that:

(1) Includes the family, other persons requested by the family, the service coordinator, and relevant providers;

(2) Is conducted not less than 90 calendar days but not more than 9 months prior to the child's 3rd birthday; and

(3) Includes the LEA representative.

(i) The purpose of the transition conference shall be to:

(1) Review the results of the IFSP team meeting held pursuant to (a) above;

(2) Update the transition plan with input from the LEA representative and other providers; and

(3) Discuss the child's program options for the period from the child's 3rd birthday through the remainder of the school year, if applicable, including any services the child might be eligible to receive under Part B of IDEIA.

(j) For a child who is determined eligible for FCESS more than 45 calendar days but less than 90 calendar days before the child's 3rd birthday, the FCESS program, as soon as possible if the parent does not object, shall notify the LEA and NH department of education that the child will reach the age for eligibility for Part B services.

(k) For a child referred fewer than 45 calendar days before the child's 3rd birthday, the FCESS program, following parental consent, shall refer the child to the NH department of education and LEA as soon as possible. The FCESS program shall not be required to conduct a multidisciplinary evaluation or initial IFSP meeting.

(l) For children exiting the program prior to 27 months of age or found no longer eligible for FCESS, the service coordinator shall develop a transition plan with the family that includes:

(1) Service options for the family to explore based on future needs;

(2) Activities as necessary to prepare the child for exiting the program;

(3) Information about parent training and resources; and

(4) Referrals to other community resources.

He-M 510.10 Administration.

(a) Each area agency shall develop an agreement with FCESS programs and the family support council within the region to detail their mutual responsibilities in supporting families who are participating in FCESS.

(b) The agreement in (a) above shall:

(1) Describe the process of referral, eligibility determination, and initiation of supports and services in the area agency system;

(2) Provide for streamlined mechanisms to enable families to easily access family support services from the area agency pursuant to He-M 519;

(3) Provide for ongoing contacts between staff of the area agency and the FCESS program to ensure open communication and effective collaboration; and

(4) Provide for procedures to address issues of common concern in the region.

(c) The area agency shall develop a written agreement with the LEA that describes:

(1) Practices that will enable FCESS and LEA personnel to collaborate effectively;

(2) When and how information will be shared, including a statement of confidentiality;

(3) A process to facilitate involvement of families, FCESS staff, and LEA staff in transition conference planning activities and meetings; and

(4) Transition activities that will take place such as home and program visits, observations, and evaluations.

(d) Each area agency, in cooperation with its family support council and FCESS programs, shall document evidence of coordination with other local agencies that serve children and their families, such as:

(1) The regional offices of the New Hampshire division of public health services;

(2) Local education agencies;

(3) Visiting nurse associations;

(4) Local hospitals and medical clinics;

(5) Child care providers;

(6) Family resource centers; and

(7) DCYF.

(e) Documentation pursuant to (d) above shall include agreements, minutes of meetings, or memoranda that demonstrate efforts to maximize the use of community resources and prevent duplication of services for families.

(f) Each area agency, in cooperation with the FCESS program, shall document evidence of outreach to local agencies and providers serving children and their families to identify children who might be eligible for FCESS.

(g) Area agencies and FCESS programs shall comply with applicable state and federal rules and regulations.

(h) FCESS programs shall annually conduct and document quality assurance activities, including, at a minimum:

(1) Constituent surveys;

(2) Record reviews;

(3) Performance data measurements;

(4) Participation in lead agency monitoring; and

(5) Development and implementation of a corrective action plan if appropriate based on (1)-(4) above.

(i) Area agencies and FCESS programs shall enter the information identified below into the lead agency's statewide data system based on the following schedule:

(1) Immediately upon referral of a child, the following information:

a. The child's name;

b. The child's date of birth;

c. The child's gender;

d. Date of referral; and

e. Referral source;

(2) Once contact with the family is established the following information shall be entered:

a. Parent or guardian contact information;

b. The child's race and ethnicity;

c. Primary language;

d. Date of intake;

e. Diagnosis and reason for referral;

f. Insurance status, as one of the following types:

1. Public;
2. Private;
3. Both public and private; or
4. None; and

g. FCESS program name;

(3) Upon eligibility determination:

a. Eligibility status; and

b. Eligibility category;

(4) Following preparation of the IFSP:

a. The date of parent or guardian consent;

b. IFSP services to be provided;

c. The delivery method of the services to be provided;

d. The frequency of the services to be provided;

e. The length, in minutes, of the services to be provided;

f. The provider;

g. The environment, including a justification statement if the environment is not a natural environment as defined in He-M 510.02(ad);

h. The projected start date of the services to be provided;

i. Circumstances regarding non-timely services;

j. Actual 6 month review date; and

k. Transition plan activities;

(4) On a monthly basis:

a. Updated insurance status;

b. Services, including evaluations, that have been provided; and

c. The child's updated diagnosis or eligibility status;

(5) Within 30 calendar days of the child exiting the program:

a. Child outcome data required by 34 CFR 303.702; and

b. The reason for exiting and date of exit; and

(6) As they occur, notifications as required by He-M 510.09 (f), (g), and (k).

(j) Each FCESS program shall have a designated program director who shall be responsible for the overall administration of the supports and services and personnel training and supervision. The director may be involved in the provision of direct supports and services.

(k) FCESS programs shall offer and provide a full array of FCESS to families throughout the calendar year.

(l) FCESS programs shall coordinate personnel schedules so that staff have opportunities to share information and strategies across disciplines on a regular basis.

(m) The area agency shall initiate a referral for a surrogate parent to the NH lead agency in accordance with He-M 510.18 when:

(1) No parent can be identified;

(2) A child is under legal guardianship of the division for children, youth and families; or

(3) A court has issued a written order for a surrogate parent.

He-M 510.11 Personnel.

(a) All personnel shall have specific training and experience in child development and knowledge of family support.

(b) Personnel shall be drawn from the following categories:

(1) New Hampshire licensed, department of education certified, or bureau of developmental services certified professionals, including, at a minimum:

a. Advanced practice registered nurse;

b. Audiologist;

c. Clinical mental health counselor;

d. Clinical social worker;

e. Dietitian registered;

f. Early childhood educator;

g. Early childhood special educator;

h. Early intervention specialist;

i. Marriage and family therapist;

j. Occupational therapist;

k. Orientation and mobility specialist;

l. Pastoral psychotherapist;

m. Physician;

n. Physician assistant;

o. Psychologist;

p. Physical therapist;

q. Registered nurse;

r. Speech language pathologist;

s. Speech-language specialist;

t. Special education teacher;

u. Special education teacher in the area of blind and vision disabilities;

v. Special education teacher in the area of deaf and hearing disabilities;

w. Special education teacher in the area of emotional and behavioral disabilities;

x. Special education teacher in the area of intellectual and developmental disabilities;

y. Special education teacher in the area of physical and health disabilities;

z. Special education teacher in area of specific learning disabilities; and

aa. Vision specialist including ophthalmologists and optometrists;

(2) New Hampshire licensed or certified professional assistants, including:

a. Licensed physical therapy assistant;

b. Licensed occupational therapy assistant; and

c. Certified speech and language assistant; and

(3) Unlicensed or uncertified personnel, including personnel who have education, training, or experience relevant to the provision of FCESS.

(c) All personnel shall utilize support strategies, assessment procedures, and treatment techniques considered to be best practice in working with a child and family applying for or receiving FCESS.

(d) All personnel shall ensure the effective provision of FCESS, via a minimum of the following:

(1) Consulting with parents, other providers, and representatives of appropriate community agencies;

(2) Participating in the child's multidisciplinary evaluation and the development of service outcomes for the IFSP; and

(3) Coaching parents and other persons chosen by the family regarding the provision of the services.

(e) Personnel identified in (b)(1) above shall:

(1) Conduct multidisciplinary evaluations;

(2) Conduct assessments;

(3) Develop or amend IFSPs;

(4) Supervise, when appropriate, licensed assistants and unlicensed personnel; and

(5) Provide service coordination.

(f) Personnel identified in (b)(2) above shall:

(1) Contribute to the multidisciplinary evaluation;

(2) Contribute to assessments;

(3) Contribute to the development or amendment of IFSPs;

(4) Be supervised, as required by their license or certification; and

(5) Provide service coordination.

(g) Personnel identified in (b)(3) above shall:

(1) Contribute to the multidisciplinary evaluation;

(2) Contribute to the assessment;

(3) Contribute to the development or amendment of IFSPs;

(4) Be supervised by one of the providers described in (b)(1) above at least once a month in the setting where FCESS is provided, with additional supervision as needed; and

(5) Provide service coordination.

(h) All FCESS personnel, including program directors and consultants, shall meet New Hampshire requirements for certification, licensing, continuing competence, or other comparable requirements.

(i) An FCESS program director shall:

(1) Be a licensed or certified professional pursuant to (b)(1) above;

(2) Have 3 years of professional experience providing FCESS; and

(3) Have one year of professional experience in a management or administrative role.

(j) A service coordinator shall:

(1) Have completed the orientation program outlined in He-M 510.12 (b); and

(2) Together with the family and other IFSP team member(s), be responsible for accessing, coordinating, and monitoring the delivery of services identified in the child's IFSP, including transition services and coordination with other agencies and persons.

(k) An individual who wishes to obtain certification as an early intervention specialist shall submit information to the bureau documenting:

(1) Possession of a minimum, in addition to the requirements in (2) below, of a bachelor's degree in:

a. Human services;

b. Family studies;

c. Psychology;

d. Child development;

e. Communication;

f. Child life;

g. Education;

h. Behavior analysis; or

i. Early intervention;

(2) A minimum of one year experience in an FCESS program for degrees listed in (1) a. - h. above;

(3) A minimum of 6 months' experience in an FCESS program for the degree listed in (1) i. above;

(4) Possession of a minimum, in addition to the requirements in (5) below, of an associate's degree or minor of studies in:

a. Physical therapy assistant;

b. Occupational therapy assistant;

c. Speech and language assistant;

d. Child development;

e. Child life;

f. Education; or

g. Early intervention;

(5) A minimum of 2 years' experience in an FCESS program for degrees listed in (4) a. - g. above;

(6) Completion of the orientation program outlined in He-M 510.12 (b); and

(7) Training and experience in the subject matter in (e)(1)-(3) and (5) above.

(l) Upon completion of (k) above, the bureau shall certify the individual as an early intervention specialist.

(m) To continue to be certified as an early intervention specialist, individuals identified in (k) above shall demonstrate ongoing professional development as described in He-M 510.12 (e).

He-M 510.12 Personnel Development.

(a) All new personnel who provide service coordination or work directly with families, including personnel involved with intake activities, shall participate in an orientation program pursuant to (b) below within 6 months from the date of hire.

(b) The lead agency orientation program shall consist of training and include information about:

(1) The history and philosophy of FCESS;

(2) Provision of service coordination;

(3) Eligibility evaluation and ongoing assessment;

(4) Procedural safeguards pursuant to He-M 203;

(5) Scientifically based research practices in FCESS evaluations, provision of supports, and service delivery;

(6) Funding for FCESS;

(7) IFSP development and implementation; and

(8) Transition from FCESS to community services such as special education.

(c) Each employee involved in the provision of FCESS to families shall have an annual personnel development plan approved by the FCESS program director. The purpose of the personnel development plan shall be to sustain and improve the relevant skills and knowledge of the employees such that the

requirements of He-M 510.11 (d) and (h) have been met. Successful achievement of professional development goals shall be included in the criteria for annual review of performance.

(d) Personnel development plans for FCESS program directors shall be developed with, and monitored by, the director's supervisor.

(e) As a part of their annual personnel development plan an early intervention specialist shall acquire at least 24 hours of continuing education credit in subject matter relevant to their job description, as determined by the program director.

(f) The area agency shall provide all program staff who work directly with families, annual training in procedural safeguards pursuant to He-M 203.

(g) The lead agency shall provide training on child outcome summary and outcome development to all program staff who directly work with families within 6 months of hire.

(h) The lead agency shall provide training on ensuring culturally competent services and adult learning strategies to all program staff who directly work with families within one year of hire.

He-M 510.13 Record keeping.

(a) Each program shall maintain individual family records that contain, at a minimum, the following:

(1) Personal information that shall include:

a. Identifying information including:

1. The child's name, family name(s), address(es), telephone number(s), and email(s); and

2. The child's birth date;

b. The name of the service coordinator;

c. The name, address, and telephone number of the child's primary health care provider; and

d. Health insurance information;

(2) Medical information that shall include:

a. A record of a physical examination conducted within the past year;

b. Documentation by qualified medical personnel of any established condition(s), as identified in He-M 510.02 (n), including diagnosis;

c. A record of immunizations;

d. A list of any required prescriptions; and

e. Other pertinent medical records;

(3) The current multidisciplinary evaluation of the child and family pursuant to He-M 510.06 (k);

(4) The current IFSP signed by the parent;

(5) Written documentation of each contact with the child and family by the provider, including:

a. A description of the service provided;

b. A description of the child's and family's response;

c. The date, location, and duration of the contact; and

d. The name and credentials of the provider;

(6) Reviews of progress once every 6 months or more frequently;

(7) Copies of any letters or notifications written to, or on behalf of, the family;

(8) Information obtained from other agencies or programs that the family believes is important in developing or providing FCESS; and

(9) Releases of information providing consent obtained from the family for evaluation and for the exchange of information among agencies and providers.

(b) Each FCESS program shall have a standard release or exchange of information form, compliant with all state and federal laws, which shall be valid for no longer than one year.

(c) All release or exchange of information forms shall include:

(1) The child's name and birth date;

(2) The information to be released or obtained;

(3) The purpose of obtaining or releasing the information;

(4) The name of the person or organization being authorized to release the information;

(5) The name of the person or organization to whom the information is to be released; and

(6) The time period for which the authorization is given, if less than one year.

(d) Each FCESS program shall maintain a log of access and disclosures of information that includes:

(1) The information accessed or disclosed;

(2) The date of access or disclosure;

(3) The name of the recipient of the information; and

(4) The purpose for which the party is authorized to use the FCESS records.

(e) Each provider and FCESS program shall maintain the confidentiality of a child's and family's records and protect the child's and family's personally identifiable information at the collection, storage, disclosure, and destruction stages in accordance with FERPA.

(f) Each FCESS program shall designate a staff member responsible for ensuring the confidentiality of any personally identifiable information, in compliance with federal law.

(g) Each FCESS program shall have policies for the training of all personnel in the collection or use of personally identifiable information and compliance with IDIEA and FERPA.

(h) Parents shall have the following rights with regard to FCESS records for their children:

(1) The right to inspect and review FCESS records at any time;

(2) The right to make requests for explanations and interpretations of the records and to receive a response to these requests within 3 business days;

(3) The right to receive, upon request, copies of records in accordance with (k) and (l) below; and

(4) The right to have a representative of the parent inspect, review, and receive copies of the records.

(i) FCESS programs shall give each family a list of the types and locations of records collected, maintained, or used by FCESS personnel. All parents shall have the right to access such records unless a particular parent does not have this authority under state law.

(j) Information shall be made available only:

(1) To those persons or agencies for whom the parent or guardian has given written consent;

(2) To FCESS personnel;

(3) To the department or other funding, licensing, or accrediting agencies as necessary for determining eligibility for funding or for assisting in accrediting, monitoring, or evaluating supports and services delivery; or

(4) As otherwise required by law.

(k) Each FCESS program shall make copies of records available to parents free of charge for the first 25 pages and not more than 10 cents per page thereafter. The fee shall not effectively prevent the parents from exercising their right to inspect and review those records. A fee shall not be charged for searching for or retrieving information.

(l) Copies of the following documents shall be provided at no cost to the family as soon as possible after each IFSP meeting:

(1) Evaluations;

(2) Assessments of the child and family; and

(3) The IFSP.

(m) FCESS programs shall advise families of their right to request that records be corrected or amended if they believe the information collected, maintained, or used is inaccurate or misleading or violates the privacy or other rights of the child or family.

(n) The FCESS program shall take steps to accommodate any request pursuant to (m) above.

(o) If the FCESS program refuses to amend the information as requested, the program director shall inform the parent of the refusal, why the request to amend the information was refused, and advise the parent of the right to complain pursuant to He-M 203.

(p) If, as a result of a complaint resolution it is decided, pursuant to He-M 203, that the information contained in the records is inaccurate, misleading, or otherwise in violation of privacy or other rights of the child, the FCESS program shall amend the information accordingly and so inform the parent(s) in writing.

(q) If, as a result of a complaint resolution it is decided, pursuant to He-M 203, that the information contained in the records is not inaccurate, misleading, or otherwise in violation of privacy or other rights of the child, the FCESS program shall inform the parent(s) of the right to place in the records a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the FCESS program.

(r) Any explanation placed in the records of the child shall be maintained by the FCESS program as part of the records of the child as long as the record, or the contested portion of a record, is maintained by the program.

(s) If the record, or the contested portion of a record, is disclosed by the FCESS program to any party, the explanation shall be disclosed to the party.

(t) The FCESS program shall inform the parent(s) when personally identifiable information collected, maintained, or used is no longer needed to provide supports and services to the child.

(u) Personally identifiable information that is no longer needed by an FCESS program shall be destroyed at the request of the parent(s).

(v) Notwithstanding (u) above, a permanent record of the following shall be maintained without a time limitation:

(1) The child's name and date of birth;

(2) The parents' contact information including address and telephone number;

(3) The name of the service coordinator(s) and early supports and services provider(s); and

(4) Exit data including the year and child's age and any programs entered into upon exiting.

(w) Records that parents have not requested to be destroyed shall be retained for at least 6 years following termination of service.

(x) All evaluations and assessments, notices of eligibility for services, IFSPs, notices of meetings, information regarding procedural safeguards, progress reports, and consent forms shall be written in language understandable to the general public and provided to the family in their native language or primary mode of communication unless it is unfeasible to do so. If the family's native language or means of communication is not a written language, the FCESS program shall take steps to ensure that the information is translated orally or by the mode of communication the family typically uses so that the information is meaningful and useful.

He-M 510.14 Utilization of Public and Private Insurance.

(a) When a child is covered by private insurance or enrolled in Medicaid, the FCESS program shall use these benefits to pay for FCESS in accordance with (b) – (k) below.

(b) The FCESS program shall not use the private insurance of a parent or child to pay for FCESS unless the parent provides parental consent. This includes the use of private insurance when such use is a prerequisite for the use of Medicaid.

(c) When an FCESS program uses a child's private insurance, the program shall not collect costs associated with the use of private insurance from the child's family, including the cost of deductibles, coinsurance and co-pays.

(d) When private insurance is used to pay for FCESS, the FCESS program shall obtain parental consent at the following times:

(1) When an FCESS program seeks to use the child's private insurance to pay for the initial provision of an FCESS identified in the IFSP; and

(2) Each time there is an increase in the provision of services and a related change in the child's IFSP.

(e) When obtaining consent under (d) above or initially using benefits under a private insurance policy, an FCESS program shall provide to the child's parents:

(1) A copy of the system of payments described in He-M 510.14; and

(2) Notice of the potential costs to the parent when private insurance is used to pay for early intervention services, including premiums or other long-term costs associated with annual or lifetime health insurance coverage caps.

(f) An FCESS program shall not delay or deny the provision of any services in the IFSP when a parent does not provide consent to use private insurance.

(g) If a parent does not provide consent to use private insurance, an FCESS program shall utilize funds available in contract with the department, including federal funds available pursuant to 34 CFR 303.510(a), for the provision of any services in the IFSP.

(h) If funds are utilized pursuant to (g) above, the parent shall not be required to reimburse any such funds.

(i) When Medicaid benefits are used to pay for FCESS, the FCESS program shall provide written notice to the child's parents that includes:

(1) A statement of the no-cost protection provisions in 34 C.F.R. §303.520(a)(2);

(2) Pursuant to (k) below, a statement that a parent's refusal to enroll in Medicaid shall not delay or cause to be denied the provision of any services in the child's IFSP; and

(3) A description of the general categories of costs that the parent would incur as a result of participating in Medicaid, including the required use of private insurance as the primary insurance.

(j) An FCESS program shall not require a parent to sign up for or enroll in Medicaid as a condition of receiving FCESS.

(k) An FCESS program shall not delay or deny the provision of any services in the child's IFSP if a parent does not enroll in Medicaid.

(l) The FCESS program shall maintain up to date insurance coverage information for each child.

He-M 510.15 Interagency Coordinating Council. The purpose of the interagency coordinating council shall be to provide advice to the lead agency regarding the FCESS program. The interagency coordinating council shall be established and operated pursuant to 34 CFR Part 303, Subpart G.

He-M 510.16 Central Directory.

(a) The purpose of the central directory shall be to provide information about:

(1) Public and private early intervention services, resources, and experts available in the state including professionals and other groups that provide assistance to children; and

(2) Research and demonstration projects related to children.

(b) The central directory shall be maintained and operated pursuant to 34 CFR Part 303.117.

He-M 510.17 Waivers.

(a) An area agency, FCESS program, parent, or provider may request a waiver of specific procedures outlined in He-M 510.

(b) The entity requesting a waiver shall:

(1) Complete the form entitled "NH Bureau of Developmental Services Waiver Request" (July 2019 edition); and

(2) Include a signature from the parent(s) or legal guardian(s) indicating agreement with the request and the area agency's executive director or designee recommending approval of the waiver.

(c) No provision or procedure prescribed by statute or federal regulation shall be waived.

(d) The request for a waiver shall be granted by the commissioner or the commissioner's designee within 30 calendar days if the alternative proposed by the requesting entity meets the objective or intent of the rule and it:

(1) Does not negatively impact the health or safety of the child; and

(2) Does not affect the quality of services to the child.

(e) The determination on the request for a waiver shall be made within 30 calendar days of the receipt of the request.

(f) Upon receipt of approval of a waiver request, the requesting entity's subsequent compliance with the alternative provisions or procedures approved in the waiver shall be considered compliance with the rule for which waiver was sought.

(g) Waivers shall be granted in writing for a specific duration not to exceed 5 years except as in (i) below.

(h) Any waiver shall end with the closure of the related program or service.

(i) The requesting entity may request a renewal of a waiver from the department. Such request shall be made at least 90 calendar days prior to the expiration of a current waiver.

He-M 510.18 Surrogate Parent.

(a) A surrogate parent shall be appointed by the lead agency in the following circumstances:

(1) No parent as defined in He-M 510.02(ag) can be identified;

(2) The lead agency, area agency, or FCESS program, after reasonable efforts, including, but not limited to telephone calls and e-mails with documentation of the dates and times of the attempts, cannot locate a parent;

(3) The child is in the custody of DCYF and the court overseeing the case has not appointed a surrogate parent meeting the requirements of (f) below; or

(4) When a court has issued a written order for a surrogate parent.

(b) An application for appointment of a surrogate parent shall be submitted to the lead agency by an area agency or FCESS program if any of the criteria in (a) above are present.

(c) Within 30 days of the receipt of a completed application pursuant to (b) above, the lead agency shall determine whether the child needs a surrogate parent, and if necessary, assign a surrogate parent.

(d) In order to determine whether a child needs a surrogate parent, the lead agency shall obtain information that demonstrates one of the following:

(1) A parent cannot be identified because there is no written record of the existence of such a person available to the area agency, FCESS program, or lead agency;

(2) A parent is not able to be located by the FCESS program or area agency as evidenced through documentation of efforts including but not limited to, telephone calls and emails and the date, time of attempts to contact parent.

(3) The FCESS program or area agency has contacted DCYF for assistance; or

(4) The absence of a court order appointing a surrogate parent for a child in the custody of DCYF.

(e) For children in the custody of DCYF, the lead agency must collaborate with DCYF to obtain necessary information for the appointment of a surrogate parent.

(f) The lead agency shall select individuals to be available to serve as surrogate parents provided such individuals:

(1) Have volunteered to serve as a surrogate parent;

(2) Have satisfactorily completed training to serve as a surrogate parent provided by the lead agency or designee;

(3) Are 21 years of age or over;

(4) Have agreed in writing to serve as a surrogate parent from the date of appointment;

(5) Have no interest that conflicts personally or professionally with the interest of the child they represents;

(6) Are not employees of the lead agency, area agency, or FCESS program responsible for the services, education, care, or any other services to the child or any family member of the child, or the school district of liability related to the transition process; and

(7) Have provided consent to a check of state registries of founded reports of abuse, neglect, exploitation, as established by RSA 161-F:49 and RSA 169-C:35, and their names do not appear on said registries.

(g) A surrogate parent assigned by the lead agency shall have the same rights and responsibilities as a parent defined in He-M 510.02(ag) for purposes of this chapter.

(h) The lead agency shall terminate the appointment of a surrogate parent when:

(1) A parent becomes known, is located, or rescinds their request or consent to have a surrogate parent appointed and will assume educational decision-making;

(2) The child ceases to be under legal custody of DCYF or guardianship of DCYF per RSA 463;

(3) The child is placed within a relative foster placement;

(4) The child is adopted; or

(5) When the assigned surrogate parent provides 30 days' notice to the lead agency of the desire to end the surrogate parent relationship.

APPENDIX A: Incorporation by Reference Information

Rule	Title	Publisher; How to Obtain; and Cost
He-M 510.06(k)(5)	The IDA Institute's, "Infant-Toddler Developmental Assessment-2 (IDA-2)" (Second Edition)	Publisher: The IDA Institute Cost: $90 for packs of 25 The incorporated document is available at: https://ida2.org/collections/ida-2-manuals-and-forms
He-M 510.06(k)(5)	Shine Early Learning's, "The Hawaii Early Learning Profile (HELP) Strands 0-3" (1992-2013)	Publisher: Shine Early Learning Cost: $4.95 single booklet/ $106.25 pack of 25 booklets The incorporated document is available at: https://shineearly.store/products/help-strands-0-3

APPENDIX B

RULE	SPECIFIC STATE STATUTES WHICH THE RULE IMPLEMENTS
He-M 510 All sections	RSA 171-A:14, V (Specific provisions implementing specific federal regulations are listed below)
He-M 510.01	34 CFR Part 303.1-3 9/28/11, IDEIA, Part C
He-M 510.02	34 CFR Part 303.4-37 9/28/11; IDEIA, Part C
He-M 510.03	34 CFR Part 303.12-13 9/28/11, IDEIA, Part C
He-M 510.04	34 CFR Part 303.13 9/28/11, IDEIA, Part C
He-M 510.05	34 CFR Part 303.421 9/28/11, IDEIA, Part C
He-M 510.06	34 CFR Part 303.303. 303.320-.322 9/28/11, IDEIA, Part C; RSA 171-A:6
He-M 510.07	34 CFR Part 303.340-345, 9/28/11, IDEIA, Part C; RSA 171-A:12
He-M 510.08	34 CFR Part 303.342 - 303.346, 9/28/11, IDEIA, Part C; RSA 171-A:11
He-M 510.09	34 CFR Part 303.209 9/28/11, IDEIA, Part C
He-M 510.10	RSA 171-A:18 IV; 34 CFR Part 303.401-417 303.209, 303.702, 303.720-724 9/28/11, IDEIA, Part C
He-M 510.11	34 CFR Part 303.119 9/28/11; IDEIA, Part C
He-M 510.12	34 CFR Part 303.118, 9/28/11; IDEIA, Part C
He-M 510.13	34 CFR Part 303.401-417, 9/28/11; IDEIA, Part C
He-M 510.14	34 CFR Part 303.510-511, 303.520-521; 9/28/11, IDEIA, Part C
He-M 510.15	34 CFR Part 303.600-605, 9/28/11, IDEIA, Part C
He-M 510.16	34 CFR Part 303.117, 9/28/11, IDEIA, Part C
He-M 510.17	RSA 541-A:22, IV
He-M 510.18	34 CFR Part 303.422