

PART He-M 203 COMPLAINT RESOLUTION PROCEDURES FOR FAMILY-CENTERED EARLY SUPPORTS AND SERVICES

Statutory Authority: RSA 171-A:14, V; Part C of Public Law 108-446, Individuals with Disabilities Education Improvement Act (IDIEA) of 2004 (20 U.S.C. 1400 et seq.)

Readopt with amendment He-M 203.02, effective 4-26-13 (Document #10324), to read as follows:

He-M 203.02 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 or coordinate services to developmentally disabled persons in the area in accordance with 42 CFR 441.301.”;

(c) “Bureau” means the bureau for family centered services of the NH department of health and human services;

(d) “Bureau administrator” means the chief administrator of the bureau;

(e) “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

(f) “Commissioner” means the commissioner of the NH department of health and human services or their designee;

(g) “Complainant” means a parent, family, individual or organization that makes a complaint in accordance with He-M 203.04 or He-M 203.11;

(h) “Department” means the New Hampshire department of health and human services;

(i) “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;

(j) “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 his or her needs in a flexible manner;

(k) “Family-centered early supports and services (FCESS) program” means a program under contract with the department to provide FCESS as defined by He-M 510;

(l) “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;

(m) “Impartial person” means someone who:

- (1) Is not an employee of any agency or other entity that:
 - a. Is involved in the provision of early supports and services;
 - b. Provides care for children; or
 - c. Provides care for applicants;
- (2) Does not have a personal or professional interest that would conflict with his or her objectivity in hearing a complaint brought under these rules; and
- (3) Is not considered to have a conflict solely because the person is paid by the department to implement the He-M 203 complaint resolution process;

(n) “Informed decision” means “informed decision” as defined in RSA 171-A:2, XI, namely, “a choice made by a client or potential client or, where appropriate, his legal guardian that is reasonably certain to have been made subsequent to a rational consideration on his part of the advantages and disadvantages of each course of action open to him.”;

(o) “Mediator” means an impartial person who:

- (1) Is qualified through completion of a mediation training course from an organization that provides such training or who has at least 5 years’ experience as a mediator;
- (2) Is knowledgeable in the laws and regulations relating to the provision of early supports and services;
- (3) Is not an employee of the department or any agency or other entity involved in the dispute to be mediated; and
- (4) Is selected on a random, rotational, or other impartial basis;

(p) “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 (l) 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 He-M 510.02 (am); or
- e. Any other individual who is legally responsible for the child's welfare;

(q) "Part C of the IDEIA" means Part C of Public Law 108-446, Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. 1400 et seq; and

(r) "Provider" means a person receiving any form of remuneration for the provision of services to a child or applicant.

Readopt with amendment He-M 203.05, effective 4-26-13 (Document #10324), to read as follows:

He-M 203.05 Resolution of Individual Child Complaints – Requesting an Impartial Due Process Hearing.

(a) A parent may request an impartial due process hearing to address a complaint related to the identification, evaluation, or provision of appropriate early supports and services for his or her child.

(b) The complaint described in (a) above shall allege a violation that occurred not more than one year prior to the date that the complaint is received.

(c) Mediation, pursuant to He-M 203.04, shall be made available to the parent whenever an impartial due process hearing is requested.

(d) Parents shall submit requests for an impartial due process hearing to address a complaint, in writing, to the bureau and send a copy to the FCESS program and area agency.

(e) If a parent is unable to make a request in writing, the agency or department employee receiving a complaint shall document the complaint in writing and seek to have the complaint signed by the complainant.

(f) The written request in (d)-(e) above shall include:

- (1) The child's name and home address;
- (2) The name of the provider or FCESS program serving the child;
- (3) A statement identifying the points of disagreement related to the identification, evaluation, or provision of appropriate FCESS to the child or the family;
- (4) A proposed resolution to the disagreement;

- (5) The signature and contact information of the person submitting the complaint; and
- (6) The date of the complaint.

Readopt with amendment He-M 203.05, effective 4-26-13 (Document #10324), to read as follows:

He-M 203.12 Notice of Procedural Safeguards.

(a) Parents and other interested individuals and organizations to include surrogate parents, area agencies, local programs, advocate programs, or anyone who may be associated with the child and family, shall be informed by the department about the complaint procedures described in He-M 203 at a minimum by making available on the department’s website at <https://www.dhhs.nh.gov/programs-services/disability-care/developmental-services/birth-3-family-centered-early-supports-1> the “Know Your Rights” handbook, as approved by the United States Office of Special Education Programs, pursuant to Part C of the IDEIA.

(b) Hard copies shall be made available upon request to:

- (1) Area agencies;
- (2) FCESS programs and providers;
- (3) Parents;
- (4) The Parent Information Center;
- (5) The Disabilities Rights Center, Inc.; and
- (6) Other interested parties.

APPENDIX

Rule	Specific State or Federal Statutes or Regulations which the Rule Implements
He-M 203 - All sections	RSA 171-A:14, V (Specific provisions implementing specific federal regulations are listed below)
He-M 203.02	RSA 171-A:2, I-b; RSA 171-A:14, V, 34 CFR Part 303.27, 34 CFR Part 303.431, 34 CFR Part 303.435, and IDEIA Part C
He-M 203.05	34 CFR Part 303.443, 303.403, and IDEIA Part C
He-M 203.12	34 CFR Part 303.404 and 303.421, and IDEIA Part C