

KNOW YOUR RIGHTS!

Notice Of Infant/Toddler and Family Rights Under New Hampshire's Family-Centered Early Supports and Services Program



New Hampshire Department of Health and Human Services
Bureau of Developmental Services

September 2013

Foreword

The Notice of Infant/Toddler and Family Rights under the NH Department of Health and Human Services, Bureau of Developmental Services, (DHHS/BDS) describes your child's and family's rights, as defined by Part C of the Individuals with Disabilities Education Act (IDEA) as well as those provided under State rules. In New Hampshire (NH), the Part C of IDEA program is called "Family-Centered Early Supports and Services" and is abbreviated as "FCESS".

Part C of the IDEA requires that a State Interagency Coordination Council (ICC) be established to provide advice to the Lead Agency which is the NH Department of Health and Human Services, Bureau of Developmental Services regarding the quality of services provided by the FCESS program. For this reason, information about any hearings or mediations is reported to the ICC. More information about the ICC may be found on the web at: <http://www.dhhs.nh.gov/dcbcs/bds/icc/index.htm>. Information is also available upon request from FCESS program staff and Area Agencies.

IDEA is a federal law that includes provisions for early supports and services for eligible children starting at birth. To support the implementation of these federal requirements, the DHHS/BDS has developed policies and procedures that meet these federal and state Part C requirements.

Because this document is an official notice of your rights under federal law and regulations, some terms may be unfamiliar to you. For this reason, some words are defined where they are used in the document and others are defined in the Glossary.

The service coordinator working with your family can suggest additional materials to help you understand your rights. He/she can also suggest ways that you and other family members can be partners with community providers to help meet the developmental needs of your child.

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INTRODUCTION

The Part C of the IDEA early intervention program in New Hampshire, known as the Family-Centered Early Supports and Services Program, is designed to maximize family involvement and ensure parental consent in each step of the process from the determination of eligibility through service delivery. Family-Centered Early Supports and Services 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. Supports and services include:

- Information,
- Training,
- Special instruction,
- Evaluation,
- Therapeutic interventions,
- Financial assistance,
- Materials and equipment,
- Emotional support, and
- The categories of services listed in He-M 510.03

Safeguards or rights have been established to protect parents and children. Parents must be informed about these rights or safeguards through the intake process when their child is referred, as well as when they receive a proposal related to their child's services or program so they can have a leadership role in the provision of services for their children.

Participation in New Hampshire's FCESS is voluntary. Any child who is a resident of NH may be referred and receive services if eligible.

Under the FCESS program in NH, as a parent of a child eligible for FCESS, you have rights which include:

- The right to a timely multidisciplinary evaluation and assessment and the development of an Individualized Family Support Plan (IFSP) within forty-five (45) calendar days from receipt of the referral by the FCESS program;
- The opportunity to receive evaluation, assessment, IFSP development, service coordination, and procedural safeguards at public expense;
- If eligible under Part C, the opportunity to receive FCESS for your child and family as addressed in an IFSP.
- Family-Centered Early Supports and Services are available at no cost to families when the family does not have insurance, however Medicaid insurance will be billed and if authorized by the parent, private insurance will be billed when available. See pages 19 and 20 for more detail.
- The right to refuse evaluations, assessment, and services;
- The right to be invited to and participate in all IFSP meetings;
- The right to receive written notice in a timely manner before a change is proposed or refused in the identification, evaluation, or in the provision of services for your child or family;
- The right to receive services in your child's natural environment to the maximum extent appropriate;

- The right to maintenance of the confidentiality of personally identifiable information and records;
- The right to review and, if appropriate, correct early supports and services records;
- The right to timely resolution of complaints by parents;
- The right of parents to use mediation to resolve disagreements and individual child complaints;
- The right to an impartial due process hearing to resolve parent/provider disagreements; and
- The right to file an administrative complaint.

In addition to the general rights listed above, you are entitled to be notified of specific procedural safeguards under the FCESS program. These rights include: Parental Consent; Prior Written Notice; Examination of Records; Confidentiality of Information; Individual Child Complaints; Administrative Complaints; and Surrogate Parents. Each of these safeguards is described in this handbook.

In New Hampshire, “appropriate early supports and services” are determined through the IFSP process. The IFSP must contain a statement of the specific early supports and services necessary to meet the unique needs of your child and family to achieve the outcomes identified in the IFSP. Family-Centered Early Supports and Services are services and supports that are designed to meet the developmental needs of each child who is eligible for FCESS, as well as the needs of the child’s family related to enhancing the child’s development.

KEY POINTS FROM REFERRAL TO IFSP DEVELOPMENT

Referral -

Your child can be referred to the FCESS program by you or another individual including, but not limited to the professionals listed in He-M 510.06. *Referrals* may be made by telephone, fax, in writing, by e-mail, or in person. When a referral is made by someone other than the parent, the FCESS program shall notify the parent immediately both verbally and in writing. Programs must conduct an evaluation and, if the child is eligible, develop an IFSP with the family within 45 calendar days from the date the referral is received by the FCESS program.

Intake -

If you choose to continue with the FCESS intake process, the *intake* meeting will be your first face-to-face contact with the FCESS program personnel. The intake coordinator will document the date of the referral, provide you with information about FCESS and other community services, and tell you about the process for obtaining FCESS. They will also tell you about your rights and procedures that you may use if you disagree with any decisions or activities that occur as part of the FCESS process.

If you decide to seek a determination of eligibility for FCESS the intake coordinator will provide you with written prior notice and ask for your consent to evaluate your child's development. If you give consent for the evaluation and assessment, this will be the next step to determine whether your child will be eligible and receive FCESS.

You will also be asked to give written consent for your child's medical records and for a physician's referral for evaluation to be sent to the program conducting your child's evaluation and assessment. You will be asked for information about any insurance, either Medicaid or private that covers your child, and you will be asked for consent to use the private insurance.

At this time you will be asked about your child's developmental and medical history as well as your priorities as a family. You will also be provided with written prior notice and asked for your consent to evaluate your child's development. You may also be asked for your written consent for the FCESS program to request pertinent information about your child from his/her doctors and others involved in his/her life.

Written Prior Notice -

Written prior notice must be given to parents/legal guardians in a timely manner before the FCESS program proposes or refuses to initiate or change the identification, evaluation, or the provision of appropriate early supports and services for your child and family. You will be given written prior notice before your child's evaluation, if he/she is found to be eligible for the FCESS program, and before his/her individualized family support plan is developed or modified, as well as before a meeting to plan for your child's transition from FCESS when your child is approaching age 3, and before information about your child is provided to your school district as part of the transition planning process. More detail can be found in the "Written Prior Notice" section of this book.

Parental Consent -

Consent means that you, as your child's parents/legal guardians, have been fully informed of all information relevant to the activity for which you are asked to consent. Information must be provided to you in your native language or other mode of communication unless it is clearly not feasible to do so. You will be asked to provide consent before each screening, evaluation and assessment is conducted and before early supports and services are provided. More detail can be found in the "Parental Consent" section of this book.

Screening -

Screening involves the use of selected tools or procedures during the intake visit or other appropriate time to obtain additional developmental information to determine next steps. Screening may or may not be completed for your child and family. Even if screening results indicate that your child appears to be age appropriate in all developmental areas, you can still obtain evaluations and assessments to determine eligibility for services.

Evaluation & Assessments -

Evaluation means the use of tools and procedures, by qualified professionals, to determine your child's initial and continuing eligibility for the FCESS program and to provide information that will be used to develop the IFSP if your child is found eligible for FCESS. The evaluation will be a multidisciplinary evaluation, meaning that it will be conducted by qualified professionals from at least 2 different disciplines. The multidisciplinary evaluation must also be carried out in a setting that is convenient to the family, include information from the family and other sources, and be selected and administered so as not to be racially or culturally discriminatory.

Assessment means the ongoing use of tools and procedures by qualified professionals to identify your child's unique strengths, needs, as well as the resources priorities and concerns of your family and the supports and services necessary to enhance your family's capacity to meet the developmental needs of your infant or toddler with special needs. The areas of development assessed include: physical development including vision, hearing, or both; cognitive development; communication development; social or emotional development; and adaptive development.

All evaluations and assessments will be provided in your native language or other mode of communication, unless it is not feasible to do so. See "Native Language".

Eligibility –

To be eligible for FCESS, a child must be under 3 years of age who:

- (1) Is at risk for, or has a developmental delay (see He-M 510.02(d) & (j));
- (2) Exhibits atypical behavior (see He-M 510.02(e)); or
- (3) Has an established condition (see He-M 510.02(l)).

The complete definition of an eligible child, including the categories listed above may be found in He-M 510.02 (d), (e), (f), (j) and (l).

If your child is found not eligible for FCESS, within three (3) business days of the determination of your child's ineligibility, you will be provided with a prior written notice informing you of that decision. The notice will include the findings of the evaluation and recommendations, along with other specific supports and services to meet your family's needs, including parent-to-parent

networks, and an explanation of how to access those supports and services. The notice will also provide you with information about your right to file a complaint or to pursue mediation to disagree with the decision that your child is not eligible for FCESS, and include the names, addresses, and telephone numbers of advocacy organizations, such as the Disabilities Rights Center that you can contact for assistance in challenging the determination.

Individualized Family Support Plan (IFSP) Development -

Part C of the IDEA standards requires that each child's IFSP must be developed within forty-five (45) calendar days of the FCESS program receipt of the referral. When delays are requested or initiated by a family for any reason the delays are considered exceptional family circumstance and include such things as illness, hospitalization, vacation, work schedules, etc.. As a result of the delay, the initiation of services for your child and family may be delayed. With parental consent, FCESS may begin prior to the completion of the evaluation using what is called an interim IFSP. If an interim IFSP is developed, the multidisciplinary evaluation and assessment must still be provided within forty-five (45) calendar days of the child's referral.

The IFSP is reviewed periodically at least every 6 months or more frequently if a provider proposes adding or discontinuing a support or service or if requested by the family. If at the review, the IFSP team is in disagreement regarding the child's continued eligibility, the FCESS program shall conduct a multidisciplinary evaluation. At any time the IFSP team may request a multidisciplinary evaluation or an assessment to determine progress, review eligibility, redefine services and outcomes, or plan for future needs.

PARENTAL CONSENT

Consent means that:

- (1) You have been fully informed of all information relevant to the activity for which consent is sought, in your **native language**, or other mode of communication;
- (2) You understand and agree in writing to the carrying out of the activity for which your consent is sought;
- (3) The consent describes that activity and lists the records (if any) that will be released and to whom; and
- (4) You understand that the granting of consent is voluntary on your part and may be revoked at any time.

If a parent revokes consent, that revocation is not retroactive (i.e., it does not apply to an action that occurred before the consent was revoked).

Your written consent must be obtained before:

- (1) Evaluation(s) and assessment(s) of your child's development is conducted;
- (2) Family-Centered Early Supports and Services are provided; and
- (3) When private insurance (child is not covered by Medicaid) is used to pay for the initial provision of a service and each time there is an increase in the provision of services.

If you do not consent to the evaluation and assessment or to the provision of early supports and services (these requirements do not apply to a parent's not giving consent to the use of their private insurance), the FCESS program shall make

reasonable efforts to ensure that you:

- (1) Are fully aware of the nature of the evaluation and assessment or the services that would be available; and
- (2) Understand that your child will not be able to receive the evaluation and assessment or services unless consent is given.

The FCESS program may not, however, take formal steps, such as requesting a hearing, to disagree with your decision. The decision about whether to consent to an evaluation and assessment of your child or to participating in early supports and services is completely up to you. If you do not give your consent for an initial evaluation, the FCESS program may:

- (1) Provide you with relevant literature or other materials;
- (2) Offer you peer counseling to help your understanding of the value of early supports and services and to address your concerns about participation in the FCESS program;
- (3) Periodically renew contact with you, on an established time schedule, to see if you have decided to participate in the FCESS program.

In addition, as the parent of a child eligible under the FCESS program, you may determine whether you, your child, or other family members will accept or refuse some or all early supports and services service(s) under this program. You may also refuse such a service after first accepting it without jeopardizing other early supports and services under the FCESS program.

Finally, you have the right to written notice of, and written consent to, the exchange of any **personally identifiable information** collected, used, or maintained under the FCESS program. (See section on Confidentiality of Information).

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 not feasible to do so.

Native Language: Native language means the language normally used by the parent of the child in the home, or 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.

Where used with reference to persons of limited English proficiency, it means the language or mode of communication normally used by the parent of the child. 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.

Personally Identifiable Information:

- 1) The name of your child, the child's parents, or the name of other family members;
- 2) The address of your child;
- 3) A personal identifier, such as your child's or your social security number; or
- 4) A list of personal characteristics or other information that would make it possible to identify your child or family with reasonable certainty.

WRITTEN PRIOR NOTICE

Written prior notice must be given to you in a timely manner before the FCESS program proposes or refuses to initiate or change the identification, evaluation, or the provision of early supports and services for your child and your family as well as before a meeting to plan for your child's transition from FCESS when your child is approaching age 3, and before information about your child is provided to your school district as part of the transition planning process. The notice must be sufficiently detailed to inform you about:

- (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 the FCESS program; and
- (5) The FCESS program complaint procedures, including a description of how to file a complaint and the timelines under these procedures. (See Resolution of Individual Child Complaints and Administrative Complaints).

The notice must be:

- (1) Written in language understandable to the general public and provided in your native language, unless it is clearly not feasible to do so.
- (2) If your native language or other mode of communication is not a written language, the ESS program shall take steps to insure that:
 - a) The notice is translated orally or by other means to you in your native language or other mode of communication;
 - b) You understand the notice; and
 - c) There is written evidence that the requirements of this section have been met
- (3) If you are deaf, blind, or have no written language, the mode of communication must be that normally used by you (such as sign language, Braille, or oral communication).

EXAMINATION OF RECORDS

In accordance with the Confidentiality of Information procedures outlined in this booklet, you must be given the opportunity to inspect and review records related to screening, evaluations and assessments, eligibility determinations, development and implementation of IFSPs, individual complaints dealing with your child, and any other portion involving FCESS records about your child and your family. See "Confidentiality of Information" for more detail.

CONFIDENTIALITY OF INFORMATION

The FCESS program gives you the opportunity to inspect and review any early supports and services records relating to your child that are collected, maintained, or used by the FCESS program. The FCESS program must comply with a request, without unnecessary delay, and before any meeting regarding an IFSP or hearing related to identification, evaluation, or provision of appropriate early supports and services, in no case, more than forty-five (45) calendar days after the request has been made.

The right to inspect and review FCESS records includes:

- (1) The right to a response from the FCESS program to reasonable requests for explanations and interpretations of the FCESS record;

- (2) The right to request that the FCESS program provide copies of FCESS records containing the information if failure to provide these copies would effectively prevent you from exercising the right to inspect and review the FCESS records; and
- (3) The right to have someone who is representing you review and inspect the FCESS record.

The FCESS program may presume that you have the authority to inspect and review FCESS records relating to your child unless the FCESS program has been provided documentation that you do not have the authority under applicable state law or court order governing such matters as guardianship, separation, and divorce.

The FCESS program shall keep a record of parties obtaining access to FCESS records collected, maintained, or used under the FCESS program (except access by parents and authorized employees of the **participating agency**), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the FCESS record.

If any FCESS record includes information on more than one child, you have the right to inspect and review only the information relating to your child, or to be informed of that specific information.

The FCESS program shall provide you, upon request, a list of the types and locations of FCESS records collected, maintained, or used by the agency.

The FCESS program may charge a fee for copies of records that are made for parents under Part C of the IDEA if the fee does not effectively prevent you from exercising your right to inspect and review those records. The FCESS program may not charge a fee to search for or to retrieve information under the FCESS program.

If you believe that information in FCESS records collected, maintained, or used under the FCESS program is inaccurate or misleading, or violates the privacy or other rights of your child or family, you may request that the FCESS program amend the information. Once the FCESS program receives your request, they shall take steps to accommodate your request, and will take one of the following actions:

- (1) The agency decides whether to amend the information in accordance with the request, within a reasonable period of time after receiving the request.
- (2) If the agency refuses to amend the information as you requested, you will be informed of the refusal and be advised of the right to a hearing.

The FCESS program, on request, provides an opportunity for a hearing to challenge information in FCESS records to insure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

If, as a result of the hearing, it is determined that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, the FCESS program will amend the information accordingly and will inform you in writing.

If, as a result of the hearing, it is determined that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, you will be informed of your right to place in the FCESS records of the child a statement commenting on the information and setting forth any reasons for disagreeing with the hearing decision.

Any explanation placed in the FCESS records of the child under this section must: (a) be maintained by the FCESS program as part of the FCESS records of the child, as long as the FCESS record or contested portion (that part of the record with which you disagree) is maintained by such agency; and (b) if the FCESS records of the child or the contested portion are disclosed by such agency to any party, the explanation must also be disclosed to that party.

A hearing held under this section must be conducted according to the procedures under the Family Education Rights & Privacy Act (FERPA), which is found in statute at 20 U.S.C. §1232g, and in regulations at 34 CFR Part 99.21 & 99.22.

Parental consent must be obtained before personally identifiable information is:

- (1) Disclosed to anyone other than officials of participating agencies collecting or using information under the FCESS program, subject to the next paragraph of this section; or
- (2) Used for any purpose other than meeting a requirement under the FCESS program.

Information from your child's FCESS record cannot be released to participating agencies without your consent unless the agency participating in the FCESS program is authorized to do so under FERPA.

The following safeguards must be in place to ensure confidentiality of records:

- Each FCESS program protects the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages;
- An official of each FCESS program is responsible for insuring the confidentiality of any personally identifiable information;
- All persons collecting or using personally identifiable information receive training or instruction regarding the FCESS program policies and procedures which comply with IDEA and FERPA;
- Each FCESS program maintains, for public inspection, a current listing of the names and positions of those employees within the agency who have access to personally identifiable information;
- The FCESS program informs parents when personally identifiable information collected, maintained, or used under the FCESS program is no longer needed to provide services to the child; and
- The information may be destroyed, at the request of the parents except for records of early supports and services pursuant to He-M502.03 (g), which requires that each service provider agency shall retain individual records for a period of 6 years following the termination of services to the individual. Thereafter upon the parents request the FCESS program will maintain only permanent FCESS records. (Permanent early supports and services records include the child's name, address, phone number, and the dates of early supports and services.)

- a. **Destroyed/Destruction** means physical destruction or removal of personal identifiers from information so that it is no longer personally identifiable;
- b. **Family-Centered Early Supports and Services Records** means the records covered by Family Education Rights and Privacy Act (FERPA); and
- c. **Participating Agency** means any agency, entity, or institution that collects, maintains, or uses personally identifiable information to implement the requirements in Part C of the IDEA with respect to a particular child, or from which information is obtained, under this part.

RESOLUTION OF INDIVIDUAL CHILD COMPLAINTS

New Hampshire's Family-Centered Early Supports and Services program (FCESS) has procedures in place to allow parties in disagreement to resolve disputes involving any matter, including matters that arise before filing an individual child complaint, related to the identification, evaluation, or provision of appropriate early supports and services. When a parent has a disagreement or has filed an individual child complaint, the FCESS program provides procedures to allow the parties involved in the dispute to resolve the matter through mediation.

If you disagree with the FCESS program on the (1) identification, (2) evaluation, or (3) provision of appropriate early supports and services for your child or family, you have the right to a timely administrative resolution of your concerns through mediation and/or an impartial due process hearing.

As a parent(s), you may initiate an individual child complaint by notifying the FCESS program, in writing, of the request for an impartial due process hearing or you may request mediation to resolve your concern. If you choose to file a complaint, the complaint must include a statement identifying the specific point(s) of disagreement related to the identification, evaluation, or provision of appropriate early supports and services for your child or family. You must sign the complaint. If a parent is unable to make a request in writing, an agency or department employee receiving a complaint shall document the complaint in writing and seek to have the complaint signed by the complainant. For assistance in completing an individual child complaint, you can call the NH Bureau of Developmental Services at 603-271-5034.

MEDIATION

New Hampshire's Family-Centered Early Supports and Services (FCESS) program provides an opportunity for parents and providers to resolve their disagreements in a non-adversarial, informal manner through mediation. The New Hampshire FCESS program ensures that the parties to a dispute have the opportunity to resolve any disagreement through mediation at any time, including disagreements that arise prior to filing a complaint related to the identification, evaluation, or the provision of early supports and services.

Mediation may not be used to deny or delay parents' right to an impartial due process hearing under the FCESS program or any other rights under Part C of IDEA. Mediation is voluntary and freely agreed to by both parties. Any party in the disagreement may request mediation; however, parents and providers are not required to use it.

Mediation must be completed in a timely manner and must be held in a location that is convenient to all parties. Timely is defined as being within thirty (30) calendar days from the date the NH Bureau of Developmental Services (BDS) receives the request for mediation. Once a request for mediation is received, the NH Bureau of Developmental Services will contact all parties relevant to the dispute to review the complaint, the mediation process, and to schedule a time and location for the mediation.

A qualified and impartial mediator who is trained in effective mediation techniques, and who is selected on a random, rotational or other impartial basis, will meet with both

parties to help them find a solution to the complaint in an informal, non-adversarial atmosphere.

Within ten (10) calendar days of a request for mediation, the mediator shall convene a session with the family and an area agency representative, at a location that is convenient to the family, to which each party may bring 3 participants. Please notify the Bureau of Developmental Services if you wish mediation to resolve your disagreement.

The Bureau of Developmental Services maintains a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services, including Part C of the IDEA.

A mediation agreement must be to the satisfaction of all parties to the dispute and must not conflict with state or federal law or policy of the FCESS program. All parties must sign the agreement and are given a copy of the written agreement at the end of the mediation. Discussions that occur during the mediation process must be held confidential and may not be used as evidence in any subsequent impartial due process hearings or civil proceedings, and the parties to the mediation process may be required to sign a confidentiality pledge prior to the beginning of the process. A statement about the confidentiality of discussions will be included in the written mediation agreement. If resolution is reached during mediation, the written agreement will be legally binding and enforceable in a state court of competent jurisdiction or in a U.S. District court.

The FCESS program is responsible for any costs that are associated with the mediation process. There is no cost to the parent(s).

You may simultaneously file a request for mediation and for an impartial due process hearing described in the next section. If an agreement is reached in mediation, the hearing is canceled.

IMPARTIAL DUE PROCESS HEARING

An impartial due process hearing is a formal procedure to ensure the timely resolution of an individual child complaint, and is conducted by an impartial hearing officer. Families seeking an impartial due process hearing must submit their request directly to the Bureau of Developmental Services and send a copy to the local FCESS program and area agency. If a parent is unable to make their request in writing, the area agency or department employee receiving the complaint must document the complaint in writing and seek to have the parent sign the complaint.

Your individual child complaint for due process hearing must include the following:

1. The child's name, home address and early supports and services program (provider) serving the child,
2. A statement identifying the points of disagreement related to the identification, evaluation, or provision of appropriate early supports and services to you or your family,
3. A proposed resolution (what you think will solve the disagreement), and
4. The signature of the person submitting the complaint, and the date of the complaint.

For assistance in filing a complaint, please call the Bureau of Developmental Services at 603-271-5034. Upon filing an individual child complaint, you will be offered mediation to resolve the complaint. You may refuse or accept mediation; however, mediation will not delay due process procedures.

A Hearing Officer will be assigned by the Bureau of Developmental Services. A Hearing Officer is an impartial person appointed to conduct the due process hearing. The hearing officer must:

- (1) Have knowledge about the provisions of Part C of the IDEA and the needs of, and services available for, eligible children and their families; and
- (2) Perform the following duties:
 - Listen to the presentation of relevant views about the complaint/disagreement;
 - Examine all information related to the issues;
 - Seek to reach a timely resolution of the disagreement (within 30 calendar days);
 - Provide a verbatim recorded or written record of the proceedings, including a written decision; and
 - Seek to reach a timely resolution of the disagreement proceedings, including a written decision. The written decision shall require the area agency to implement the resolution of the complaint consistent with the contract between the agency and the department, and state laws and rules, as applicable.

Hearing Officers used in an **impartial due process hearing** and mediators used in mediation process must be “impartial”. *Impartial* means that the person appointed to serve as the hearing officer (or mediator) of the impartial due process proceeding is not an employee of the lead agency or a local FCESS program involved in the provision of FCESS or care of the child; and does not have a personal or professional interest that would conflict with his or her objectivity in implementing the process.

A person who otherwise qualifies under this section is not an employee of an agency solely because the person is paid by the agency to implement the due process hearing procedures or mediation procedures under this part. The same person may not be the hearing officer and the mediator involving the same dispute.

A hearing officer conducting a hearing shall at a minimum:

- (1) Be impartial as described above;
- (2) Possess knowledge of, and the ability to understand, the provisions of Federal and State regulations pertaining to this program, and legal interpretations of the Federal and State regulations by Federal and State courts; standard legal practice;
- (3) Possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and
- (4) Possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

Under the Part C of the IDEA, you are given the rights listed below in any impartial due process hearing carried out under this section:

- (1) To be accompanied by and advised by a lawyer (at your expense) and individuals with special knowledge or training about the FCESS program under Part C of the IDEA;
- (2) To present evidence and confront, cross examine, and to compel the attendance of witness;
- (3) To prohibit the introduction of any evidence at the proceedings that has not been disclosed to you at least five (5) calendar days before the proceeding;
- (4) To obtain a written or electronic verbatim (word-by-word) transcription of the proceeding; and

- (5) To obtain written findings of fact and decisions.

Any proceedings for implementing the impartial due process hearing must be carried out at a time and place that is reasonably convenient to you.

No later than thirty (30) calendar days after receipt, by the Bureau of Developmental Services of your disagreement (complaint), the impartial due process hearing required under this section must be completed and a written decision and findings of fact must be mailed to each of the parties except that the hearing officer may grant specific extensions of the thirty (30) calendar day timeline at the request of either party. Any party not satisfied with the findings and decision of the impartial due process hearing has the right to bring civil action in state or federal court. A decision made at the impartial due process hearing shall be final, except that any party may bring a civil action in state or federal court.

A decision made by the hearing officer at the due process hearing shall be final, and:

- 1) Shall be made available to the public consistent with the requirements of IDEA relating to the confidentiality of data, information, and records; and
- 2) Shall be transmitted to the Interagency Coordinating Council.

During the time period pending of any proceeding involving a parent/provider disagreement (complaint), unless the FCESS program and you otherwise agree, your child and family will continue to receive the appropriate early supports and services currently being provided. If the disagreement (complaint) involves an application for initial services, your child and family must receive those services that are not in dispute.

ADMINISTRATIVE COMPLAINTS

In addition to the Individual Child Complaints process (discussed in the previous section) an individual or organization, including an individual or organization from another state, may file a written signed complaint that any public agency or private service provider participating in the FCESS program is violating a requirement of the Part C of the IDEA.

The complaint must include:

- (1) A statement that a requirement of Part C of the IDEA has been violated by the FCESS program;
- (2) The facts on which the complaint is based; and
- (3) The contact information for the complainant; and if alleging violations with respect to a specific child:
 - a. The name and address of the child;
 - b. The name of the area agency, FCESS program, or provider serving the child;
 - c. A description of the nature of the problem, including facts relating to the problem; and
 - d. A proposed resolution of the problem, to the extent known and available to the party at the time the complaint was filed.

Complaints must be mailed to:

Bureau of Developmental Services
FCESS Director
105 Pleasant Street
Concord, NH 03301

The complaint must be filed with the Bureau of Developmental within one (1) year of the alleged violation.

Under certain circumstances, the period for filing the complaint may be longer:

- (1) If the violation is still occurring for that child or other children; or
- (2) If the person filing the complaint is requesting reimbursement or corrective action for a violation that occurred within three (3) years of filing the complaint.

Once the Bureau of Developmental Services has received the complaint, they have sixty (60) calendar days (unless program exceptional circumstances exist with respect to a particular complaint) to investigate the complaint and issue a written decision that addresses each allegation in the complaint, contains the facts and conclusions, and the reasons for the final decision.

The decision will include procedures for effective implementation of the final decision, if needed, including technical assistance activities, negotiations, and corrective actions to achieve compliance. An independent on-site investigation will be conducted if the Bureau of Developmental Services determines that such an investigation is necessary. The area agency, local FCESS program, or provider will be offered an opportunity to respond to the complaint, including to present a proposal to resolve the complaint.

The individual or organization filing the complaint has the opportunity to submit additional information, either orally or in writing, about the complaint. All relevant information will be reviewed and an independent determination as to whether the public agency is violating a requirement of Part C of the IDEA will be made. If needed in order to effectively implement the final decision, technical assistance activities, negotiations, and corrective actions to achieve compliance will be provided.

If the final decision indicates that appropriate services were/are not being provided, the Bureau of Developmental Services must address how to remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action. The Bureau of Developmental Services must also address appropriate future provisions of services for all infants and toddlers with disabilities and their families.

A sixty (60) calendar day extension of the time limit for resolving complaints shall be authorized by the Bureau of Developmental Services' administrator or his or her designee, pursuant to Part C of the IDEA, if the case involves complex issues such that the investigation cannot be completed within the sixty (60) calendar day timeline, or the parties involved agree to extend the time to engage in mediation.

For more information about these complaint procedures, contact the Bureau of Developmental Services at (603) 271-5034.

If a written complaint is received that is also the subject of a due process hearing, or contains multiple issues, of which one or more are part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved within the sixty (60) calendar day timeline using the complaint procedures described in this document.

If an issue is raised in an administrative complaint that has been previously decided in a due process hearing involving the same parties,

- (1) The hearing decision is binding; and
- (2) The Bureau of Developmental Services must inform the complainant to that effect.

A complaint alleging a public agency's or private service provider's failure to implement a due process decision must be resolved by the Bureau of Developmental Services.

EDUCATIONAL SURROGATE PARENTS

The rights of children eligible under the FCESS program are protected even if:

- (1) No parent can be identified;
- (2) The FCESS program, after reasonable efforts, cannot discover the whereabouts of a parent; or
- (3) The child is under legal guardianship of the division for children, youth, and families under the laws of New Hampshire.

An individual is assigned to act as an "educational surrogate parent" who is trained regarding FCESS for the parent according to the procedures that follow. The procedures include a method for determining whether a child needs a surrogate parent and assigning a surrogate to the child. The following criteria are employed when selecting surrogates:

- (1) Educational surrogate parents are selected in the manner authorized by state law.
- (2) A person selected as a surrogate parent:
 - (a) Has no interest that conflicts with the interest of the child he or she represents;
 - (b) Has knowledge and skills that ensure adequate representation of the child;
 - (c) Is not an employee of any state agency or a person or an employee of a person providing early supports and services for the child or for any family member of the child. A person who otherwise qualifies to be a surrogate parent under this section is not an employee solely because he or she is paid by a public agency to serve as a surrogate parent; and
 - (d) Resides in the same general geographic area as the child, whenever possible.

An educational surrogate parent may represent the child in all matters relating to:

- (1) The evaluation and assessment of the child;
- (2) Development and implementation of the child's IFSPs,
- (3) Including evaluations and periodic reviews;
- (4) On-going assessment;
- (5) The ongoing provision of early supports and services for the child; and
- (6) Any other rights established under Part C of the IDEA.

UTILIZATION OF PUBLIC AND PRIVATE INSURANCE* (*He-M 510.14)

- (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) – (h) below.
- (b) 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.
- (c) When private insurance is used to pay for FCESS, the FCESS program shall obtain parental consent:
 - (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.
 - (d) When obtaining consent under (c) 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.
 - (e) 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.
 - (f) 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 (h) 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.
 - (g) An FCESS program shall not require a parent to sign up for or enroll in Medicaid as a condition of receiving FCESS.
 - (h) 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.

Medicaid No-Cost Protections

Use of Medicaid will not:

- a. Decrease available lifetime coverage or any other insured benefit for the child or parent;
- b. Result in the child's parents paying for services that would otherwise be covered by the public benefits or insurance program;
- c. Result in any increase in premiums or discontinuation of public benefits or insurance for the child or the child's parents; or
- d. Risk loss of eligibility for the child or the child's parents for home and community-based waivers based on aggregate health-related expenditures.

The following services shall be provided to each child at public expense at no cost to the parent, although Medicaid Insurance will be billed and Private Insurance will be billed with consent:

- (1) Implementing child find 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.

GLOSSARY

Assessment: The ongoing procedures used by appropriate, qualified personnel throughout the period of a child's eligibility under the FCESS program to identify:

- (a) The child's unique strengths and needs and the services appropriate to meet those needs;
- (b) The resources, priorities, and concerns of the family, and the supports and services necessary to enhance the family's capacity to meet the developmental needs of their infant or toddler with a disability; and
- (c) The nature and extent of early supports and services that are needed by the child and the child's family to meet the needs in (a) and (b) above.

Disclosure: To permit access to or the release, transfer, or other communication of education records, or the personally identifiable information contained in those records, to any party. Disclosure may be by multiple means, including oral, written, or electronic means.

Evaluation: The procedures used by appropriate, qualified personnel to determine a child's initial and continuing eligibility under the FCESS program. The procedures used must be consistent with the definition of "infants and toddlers with disabilities" in 34 CFR 303.16, including determining the status of the child in each of the developmental areas.

Family Assessment: Identification of the family's resources, priorities, and concerns, and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of the child.

IDEA: IDEA stands for Individuals with Disabilities Education Improvement Act. In 2004 it was reauthorized as the Individuals with Disabilities Education Improvement Act (IDEIA). The IDEIA continues to be referred to as the IDEA most of the time.

Individualized Family Support Plan (IFSP): A written plan for providing early supports and services for eligible children/ families that:

- (a) Is developed jointly by the family and appropriate, qualified personnel providing early supports and services;
- (b) Is based on the multidisciplinary evaluation and assessment of the child and the assessment of the strengths and needs of the child's family, as determined by the family and as required by Federal Law;
- (c) Includes developmental outcomes, strategies, and activities; and
- (d) Includes services necessary to enhance the development of the child and the capacity of the family to meet the special needs of the child.

For more detail about the required components of the IFSP, please refer to the booklet "Family-Centered Early Supports and Services – A Guide for Families" and the state rule He-M 510.

Mediation: Mediation is a process that helps parents, the Bureau of Developmental Services, and the local FCESS providers resolve disagreements in an informal, non-adversarial atmosphere. Mediation is voluntary and both parties must freely agree to participate. It is generally quicker than going to a hearing or court. Both parties participate in putting an agreement together and must approve the agreement. Mediation may not be used to deny or delay your right to an impartial hearing.

Multidisciplinary: The involvement of two or more separate disciplines or professions in the provision of integrated and coordinated services, including evaluation and assessment activities in § 303.322 and development of the IFSP in § 303.342.

Natural Environments: Natural Environments means places and situations where the child's age peers without disabilities live, play, and grow.

Parent: "Parent" means a biological, adoptive parent(s), or foster parent of a child, a guardian (but not the State if the child is in the custody of the Division of Children, Youth and Families), a person acting in the place of a natural or adoptive parent, such as a grandparent, stepparent or other relative with whom the child lives, or a person who is legally responsible for the child's welfare, or an individual assigned to be a surrogate parent, in accordance § 303.406.

State Lead Agency: Refers to the Department of Health and Human Services, Bureau of Developmental Services as the appointed lead agency for Part C of the IDEA in the State of New Hampshire. Part C of the IDEA also known as "Family-Centered Early Supports and Services" (FCESS).

Transition from FCESS: The process that happens when a child exits or the family and FCESS program are preparing for the child's exit from the program and entry into preschool or other appropriate program, including community-based activities/services. Transition planning occurs either because the child is approaching the age of 3 or because it has been determined that the child no longer needs FCESS. Additional information may be found in guidebook, "Transition from FCESS – A Guide for Families and Staff".

Ward of the State: The term 'ward of the State' means a child who, as determined by the State where the child resides, is a foster child, is a ward of the State, or is in the custody of a public child welfare agency. Exception the term does not include a foster child who has a foster parent who meets the definition of a parent. This term is not typically used in NH, but is used in the Federal law.

Note:

References to Federal Law are referring to 34 Code of Federal Regulations (CFR) Part 303 available at: <http://idea.ed.gov/>

References to State Rules are referring to He-M 510 and He-M 203 available at: http://www.gencourt.state.nh.us/rules/state_agencies/he-m500.html (He-M 510), and http://www.gencourt.state.nh.us/rules/state_agencies/he-m200.html

References to FERPA are referring to Part 99 Family Educational Rights and Privacy Act is available at: <http://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html>

Copies of the State rules are available upon request from: Bureau of Developmental Services, 105 Pleasant Street, Concord, NH 03301, 603-271-5034, or 1-800-852-3345 (voice and TDD) ext. 5034.

LOCAL AREA AGENCY FCESS CONTACT INFORMATION:

Region 1

Northern Human Services
87 Washington Street
Conway, NH 03818
447-3347/FAX: 447-8893
www.northernhs.org

Region 2

PathWays of the River Valley
654 Main Street
Claremont, NH 03743
542-8706/FAX: 542-0421
www.pathwaysnh.org

Region 3

Lakes Region Community Services
PO Box 509
Laconia, NH 03247-0509
524-8811/FAX: 524-0288
www.lrcsc.org

Region 4

Community Bridges
2 Whitney Road
Concord, NH 03301
225-4153/FAX: 226-0376
1 800 499-4153
www.communitybridgesnh.org

Region 5

Monadnock Developmental Services, Inc.
121 Railroad Street
Keene, NH 03431
352-1304/FAX 352-1637
www.mds-nh.org

Region 6

Gateways Community Services
144 Canal Street
Nashua, NH 03064
459-2775/FAX: 889-5460
www.gatewayscs.org

Region 7

The Moore Center
195 McGregor Street Unit 400
Manchester, NH 03102
206-2700/FAX: 624-7597
www.moorecenter.org

Region 8

One Sky Community Services
755 Banfield Road Suite 3
Portsmouth, NH 03801
436-6111/FAX: 436-4622
1 800 660-4103
www.oneskyservices.org

Region 9

Community Partners
Forum Court
113 Crosby Road Suite 1
Dover, NH 03820-4375
516-9300/FAX: 743-3244
www.communitypartnersnh.org

Region 10

Community Crossroads
8 Commerce Drive
Atkinson, NH 03811
893-1299/FAX 893-5401
www.communitycrossroadsnh.org

Towns and Cities by Region

Region I

B Albany
E Barlet
R Bath
L Benton
I Berlin
N Bethlehem
/ Brookfield
L Carroll
I Carlisle
T Chatham
T Colebrook
L Columbia
E Conway
T Dalton
O Denville
N Dummer
/ Easton
O Eaton
N Effingham
W Exot
A Franconia
Y Freedom
 Gorham
 Grovelton
 Hart's Location
 Haverhill
 Jackson
 Jefferson
 Lancaster
 Landaff
 Lincoln
 Lisbon
 Littleton
 Livemore
 Lyman
 Madison
 Milan
 Millsfield
 Monroe
 Monkomboro
 Northumberland
 Ossipee
 Piermont
 Pittsburg
 Randolph
 Sanbornville

Region II

C Acworth
L Canaan
A Chaderstown
R Claiborn
R Cornish
E Croydon
M Dorchester
O Erfield
N Goshen
/ Grafton
T Grantham
L Hancock
E Langdon
B Lebanon
A Lempsster
N Lyne
O Newport
N Orange
 Orford

L Alexandria
A Aton
C Ashland
O Bamstead
N Belmont
I Bridgewater
A Bristol
L Campton
A Chr. Harbor
K Ellsworth
E Gilford
S Gilmanston
R Groton
E Hebron
E Holderness
G Laconia
I Meredith
O New Hampton
N Plymouth
 Runney

Region III

L Alexandria
A Aton
C Ashland
O Bamstead
N Belmont
I Bridgewater
A Bristol
L Campton
A Chr. Harbor
K Ellsworth
E Gilford
S Gilmanston
R Groton
E Hebron
E Holderness
G Laconia
I Meredith
O New Hampton
N Plymouth
 Runney

Region IV

C Allentown
O Andover
N Boscawen
C Bow
O Bradford
R Canterbury
D Chichester
 Concord
 Dabury
 Deering
 Durbanston
 Epsom
 Franklin
 Henniker
 Hill
 Hillsboro
 Hopkinton
 Loudon
 Newbury

Sambornston
 Thornton
 Tilton
 Wentworth

Plainfield
 Springfield
 Sunapee
 Unity
 Washington

New London
 Northfield
 Pembroke
 Pittsfield
 Salisbury
 Sutton
 Warner
 Weare
 Webster
 Wilnot
 Windsor

Region V

K Alstead
E Andrim
E Bennington
N Chesterfield
E Dublin
E Fitzwilliam
N Franconstown
E Gilsou
 Greenfield
 Greenville
 Hancock
 Harrisville
 Hinsdale
 Jaffrey
 Keene
 Lyndeborough
 Marlborough
 Marlow
 Nelson
 New Ipswich
 Peterborough
 Richmond
 Rindge
 Roxbury
 Sharon
 Spofford
 Stoddard
 Sullivan
 Surry
 Swanzey
 Temple
 Troy
 Walpole
 Westmoreland
 Winchester

Region VI

M Amherst
E Brookline
R Hollis
R Hudson
I Litchfield
M Mason
A Merrimack
C Milford
K Mt. Vernon
/ Nashua
A Wilton

Region VII

M Auburn
A Bedford
N Candia
C Goffstown
H Hooksett
E Londonderry
S Manchester
T New Boston
E R

Region VIII

P Brentwood
O Deerfield
R East Kingston
T Epping
S Exeter
M Ferris
O Greenland
U Hampton
T Hampton Falls
H Kensington
/ Kingston
S New Castle
E Newfields
A Newington
C Newmarket
O North Hampton
A Northwood
T Nottingham

Portsmouth
 Raymond
 Rye
 Seabrook
 South
 Hampton
 Stratham

Region IX

D Barrington
U Dover
R Durham
H Farmington
A Lee
M Madbury
/ Middleton
D Milton
O New Durham
V Rochester
E Rollinsford
R Somersworth
 Strafford

Region X

A Abington
T Chester
K Danville
I Derry
N Hampstead
S Newton
O Pelham
N Plaistow
/ Salem
S Sandown
A Windham

NEW HAMPSHIRE'S DEVELOPMENTAL SERVICES SYSTEM AREA AGENCIES

There are ten (10) Area Agencies that are divided into geographical regions throughout New Hampshire that contract with the Bureau of Developmental Services to provide services to individuals with developmental disabilities and their families. Each Area Agency is the State contract designee to provide services (including FCESS) in their respective region and combined they serve New Hampshire's developmental disability, and acquired brain injury communities totaling in excess of 6,000 individuals.

This map shows how the ten area agencies are distributed across the state.

	<u>Region 1 - Northern Human Services</u>
	<u>Region 2 - PathWays of the River Valley</u>
	<u>Region 3 - Lakes Region Community Services</u>
	<u>Region 4 - Community Bridges</u>
	<u>Region 5 - Monadnock Developmental Services, Inc.</u>
	<u>Region 6 - Gateways Community Services</u>
	<u>Region 7 – The Moore Center</u>
	<u>Region 8 - One Sky Community Services</u>
	<u>Region 9 - Community Partners</u>
	<u>Region 10 – Community Crossroads</u>



Copies of this handbook may be obtained from providers of Family-Centered Early Supports and Services, and other related organizations such as the Family Resource Connection (1-800-298-4321, voice and TDD), Parent Information Center, the Disability Rights Center, the Developmental Disabilities Council, and on the DHHS website: <http://www.dhhs.nh.gov/dcbcs/bds/families.htm>. It will be available in English and Spanish, and in alternate formats as needed to provide access to individuals with disabilities and limited English proficient parents.

Any interested party may request a “Know Your Rights” handbook. It may also be obtained by calling or writing to: Bureau of Developmental Services, 105 Pleasant Street, Concord, NH 03301, 603-271-5034, or 1-800-852-3345 (voice and TDD) ext. 5034.