

VERMONT DEPARTMENT OF EDUCATION
SPECIAL EDUCATION REGULATIONS
AND
OTHER PERTINENT REGULATIONS

FROM THE VERMONT STATE BOARD OF EDUCATION
MANUAL OF RULES AND PRACTICES

Effective May 24, 1997

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**SPECIAL EDUCATION RULES APPEARING IN
THE VERMONT STATE BOARD OF EDUCATION MANUAL OF RULES AND
PRACTICES**

2360.1 Statement of Purpose: The Vermont Department of Education includes a Family and Educational Support Team whose purpose with respect to special education is to: (1) assure that all students who have been referred for special education, who are being evaluated for special education or who are eligible for special education have available to them a free appropriate public education; (2) assure that the rights of students, as described above, and their parents are protected; (3) assist local education agencies to provide for the education of students, as described above, in the least restrictive environment (LRE), and (4) assess the effectiveness of efforts to educate students, as described above.

Statutory/Regulatory Authority: 16 VSA Chapters 101 and 23, PL 101-476 Individual with Disabilities Education Act (IDEA), PL 93-112, §504 of the Rehabilitation Act of 1973, PL 89-313 and PL 94-482, all as amended from time to time.

2360.1.1 Reserved.

2360.2 Definitions.

2360.2.1 For purposes of Rule 2360, et seq., "accommodations" are defined as those evaluation procedures, curriculum, material or programmatic adaptations, behavior management interventions, and supplemental aids and services that are necessary for an eligible student to benefit from his or her regular education or to participate in non-academic or extracurricular activities.

2360.2.2 "Responsible agency" means, for the purposes of these rules, the school district, pursuant to 16 V.S.A. §11(10), that is responsible for providing education and the supervisory union responsible for providing or arranging for the provision of special education and related services to the student.

2360.2.3 "Specialist" means an individual who possesses knowledge in the particular area for which information is sought and meets applicable state licensing requirements.

2360.2.4 For purposes of these rules, "Special Education and Related Services" are defined as follows:

- (1) Special Education. The term "special education" means specially designed instruction, at no cost to the parent, to meet the unique needs of an eligible child with a disability including classroom instruction, instruction in physical education, vocational education, home instruction, instruction in hospitals and institutions and instruction in other settings.
- (2) Related Services. The term "related services" means transportation, school related rehabilitation counseling and social work services and such developmental, corrective, and other supportive services required to assist a child with a disability to benefit from special education.
- (3) Assistive Technology.
 - (a) Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of children with disabilities.
 - (b) Assistive technology service means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device.
 - 1) The term assistive technology service includes:
 - a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;
 - b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices for children with disabilities;
 - c) Selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or

replacing assistive technology devices;

- d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
- e) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and
- f) Training or technical assistance for professionals, including individuals providing education or rehabilitation services, employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of children with disabilities.

2360.2.5 Whenever the words "parent" or "parents", appear in these rules, the words shall also mean, as appropriate, educational surrogate parent or guardian.

2360.3 Comprehensive Child Find System.

(a) Local Procedures.

Each responsible agency shall establish written procedures for the identification and evaluation of children with disabilities in compliance with state and federal standards.

(b) Activities.

- (l) Each responsible agency shall identify, locate and evaluate all children or young adults with disabilities, birth through twenty-one years of age, residing within the jurisdiction of the responsible agency who are in need of special education.

- (ii) Those activities designed to identify, locate and evaluate children, birth through 5.11 years of age, who have disabilities and are in need of special education shall be coordinated with other public agencies that are responsible for serving those children.
- (iii) Each responsible agency shall identify, locate and evaluate all children birth through 2.11 years of age in accordance with (Rule 2360.5) and the applicable Part H regulations.

(c) Reporting.

Each responsible agency shall report to the Commissioner on the procedures utilized and data collected regarding the identification, location and evaluation of children with disabilities who are birth through twenty-one years of age as required by state and federal law.

2360.4 Public Notification.

- (a) Each responsible agency shall ensure that public notification is given before conducting any significant activity that is designed to identify, locate or evaluate children with disabilities who are birth through twenty-one years of age.
- (b) Each responsible agency should coordinate with other public agencies responsible for serving children with disabilities to provide public notification before conducting any significant activity designed to identify, locate or evaluate children with disabilities who are birth through 5.11 years of age.
- (c) Each responsible agency shall annually inform the public regarding the availability of special education services for children with disabilities who are three through twenty-one years of age, including:
 - (i) those who are not enrolled in school, and
 - (ii) those children who turn 3 years of age at any time after the school year begins and prior to the beginning of the next school year.

2360.5 Early Intervention Services for Infants and Toddlers, birth through 2 years 11 months of age.

(1) Eligibility:

Families with children from birth through 2 years 11 months of age, who experience a developmental delay or have a diagnosed physical or mental condition which has a high probability of resulting in a developmental delay, are eligible for early intervention services as determined by a family-centered assessment conducted by a multidisciplinary core team.

(a) Definition of developmental delay:

A developmental delay is defined as a clearly observable and measurable delay in one or more of the following developmental areas: cognitive development, physical development including hearing or visual, communication development, social or emotional development or adaptive development, and the delayed development shall be at a level that the child's future success in home, school or community cannot be assured without the provision of early intervention services. The determination of developmental delay must be verified through a family-centered, multidisciplinary evaluation process which uses:

- (1) observations/reports/clinical judgments by the family and other members of the assessment team; and
- (2) a review of pertinent medical/ educational records, as needed; and
- (3) non-discriminatory and appropriate screening and assessment instruments which may include criterion referenced or norm referenced instruments or screening/developmental profiles.

(b) High probability for developmental delay means:

A diagnosed physical or mental condition which has a high probability of resulting in a developmental delay. The delay in development may or may not be exhibited at the time of diagnosis.

- (2) Eligibility for early intervention services is based on a mental or physical condition that has a high probability of resulting in a developmental delay. In making this decision, the core team (multidisciplinary team) will review medical records, family circumstances and developmental information indicating conditions or medical history, that meet this criteria.
- (3) Exit from early intervention services can occur when the:
 - (a) family requests services to be terminated;
 - (b) Individualized Family Service Plan (IFSP) team determines, based on evaluations, that the child is functioning at appropriate levels for the child's age and there is no longer a need for services.
 - (c) family moves from the state. Appropriate linkages to the receiving state will be made by the IFSP service coordinator at the family's request.
 - (d) Child turns three and transitions into preschool services (Essential Early Education).
- (4) Transition to Essential Early Education (EEE) Services
 - (a) The IFSP service coordinator shall notify the local school district in writing at least six months prior to the child's third birthday and, with the permission of the family, will convene a meeting between the family, school district representative and a representative from the Family, Infant and Toddler Project, at least 90 days prior to the child's third birthday.
 - (1) The meeting will review program options for the child and will establish a written transition plan to enable the child to enter the essential early education (EEE) program, if eligible according to rule 2361.1.
 - (2) Any necessary evaluations will be part of the written transition plan.
 - (3) For children receiving specialized instruction on the IFSP, eligibility for EEE services was established with

their eligibility for early intervention services and re-evaluation to determine eligibility for EEE when the child is turning three is not required unless the initial Part H eligibility is three years old.

(4) The family or school district may request an evaluation for reconsideration of eligibility or to assist with program development, at any time.

(b) Any child not already on an IFSP may be determined eligible for EEE services pursuant to rule 2361.

2361 Essential Early Education for children 3 years through 5 years 11 months.

Beginning on July 1, 1991 each school district in Vermont shall provide a free appropriate public education to all eligible children who are three through 5 years 11 months of age.

2361.1 Eligibility for Essential Early Education for children 3 years through 5 years 11 months of age.

(1) To be determined eligible for essential early education services a child must receive a comprehensive evaluation (Rule 2362.2) under the auspices of an Evaluation and Planning Team (Rule 2364.1); and based on the results of the comprehensive evaluation, Evaluation and Planning Team must determine that:

(a) the child demonstrates an observable and measured delayed development in one or more fundamental skills; and

(b) the child's delayed development is at a level that the child's future success in the home, school and community cannot be assured without the provision of special education services prior to enrollment in elementary school.

(2) For purposes of determining eligibility, fundamental skills include:

(a) communication such as speech or language skills;

(b) adaptive behavior such as social or self-care skills;

(c) gross or fine motor skills; and

- (d) cognitive skills.
- (3) Delayed development in fundamental skills shall be determined using at least two evaluation procedures that include one valid and reliable test (Rule 2362.2.5).
- (4) Delayed development in one or more of the fundamental skills shall be determined using the following criteria:

(a)

Age

Criteria

3 - 4.11

functioning at a level that is at least 18 months below the child's chronological age or;

5 - 5.11

functioning at a level that is at least 24 months below the child's chronological age.

OR

- (b) The child has a medical condition which may result in significant delays by the time the child enrolls in elementary school.

2362 Eligibility.

- (1) To be determined eligible for special education, an elementary or secondary student must receive a comprehensive evaluation (Rule 2362.2) under the auspices of an Evaluation and Planning Team (Rule 2364.1); and based on the results of the comprehensive evaluation, the Evaluation and Planning Team must determine that the student:
 - (a) meets one or more disability categories (Rule 2362.1);
 - (b) exhibits the adverse effect of the disability on educational performance; and
 - (c) is in need of special education.

These categories of disability and criteria shall also be applied at the time the student receives a comprehensive re-evaluation to determine eligibility (Rule 2362.2.8).

- (2) In order to meet the requirements of Rule 2362 (1) (a-c), above, the Evaluation and Planning Team shall document the following in its evaluation report (Rule 2362.2.6):
- (a) To establish that a student meets one or more of the disability categories, the Evaluation and Planning Team shall determine, that the student meets the criteria of the category and provide written justification for their decision.
 - (b) To establish that a disability has had an adverse effect on the student's educational performance, the Evaluation and Planning Team shall determine and document that the student is functioning significantly below expected age or grade norms, in one or more of the basic skills. This determination of adverse effect, usually defined as -1.0 standard deviation or its equivalent, shall be documented and supported by two or more measures of school performance. These measures may include but are not limited to:
 - . parent or teacher observation
 - . grades
 - . curriculum-based measures
 - . work or language samples
 - . other test results.
 - (c) To establish that a student is in need of special education, the Evaluation and Planning Team shall consider the interventions, services, and accommodations that the student may need. The Evaluation and Planning Team shall then determine, and provide justification that the student requires specially designed instruction that cannot be provided within the school's standard instructional conditions created by the school's comprehensive system of educational services, including compensatory and remedial services.
- (3) For purposes of determining eligibility, unless otherwise stated in an individual category of disability (Rule 2362.1), basic skill areas are defined as:
- (a) oral expression;
 - (b) listening comprehension;

- (c) written expression;
- (d) basic reading skills;
- (e) reading comprehension;
- (f) mathematics calculation;
- (g) mathematics reasoning; and
- (h) motor skills.

For an individual with a sensory impairment, one or more comparable basic skills shall be considered to serve as an appropriate substitute for one or more of the above basic skills, for example, Braille skills for basic reading skills.

- (4) The amendment to Rules 2362 and 2362.1 shall take effect on July 1, 1992 for students being initially evaluated for special education eligibility. For students who were determined to be eligible for special education prior to July 1, 1992, these amendments shall be applied at the student's next comprehensive re-evaluation (Rule 2362.2.7(1)) after July 1, 1992.

2362.1 Categories of Disability: The existence of one or more of the following categories of disability shall be established according to the criteria set forth below.

- (1) (a) A learning impairment or delay in learning shall be of sufficient magnitude to cause a student's performance to fall at or below -1.5 standard deviations (or equivalent measure) in basic skills and aptitude, and the student shall show concurrent deficits in adaptive behavior.
- (b) A specific learning disability of a perceptual, conceptual, or coordinative nature shall be demonstrated by a severe discrepancy between a student's ability and his or her achievement in one or more of the following basic skill areas:
 - (1) oral expression;
 - (2) listening comprehension;
 - (3) written expression;

- (4) basic reading skills;
- (5) reading comprehension;
- (6) mathematics calculation; or
- (7) mathematics reasoning.

The discrepancy shall be greater than 1.5 standard deviations below the expected achievement level for a given ability level, and shall not be primarily the result of a visual, hearing, or motor handicap; learning impairment; emotional disturbance; or environmental, cultural, or economic disadvantage.

- (c) A visual impairment, as evaluated by an optometrist or ophthalmologist, shall be demonstrated by central visual acuity that is 20/70 or worse in the better eye with correction, or a peripheral field that subtends an angle not greater than 20 degrees at its widest diameter. For the purposes of this disability, mobility and orientation skills shall also be considered to be basic skills.
- (d) Deafness or being hard of hearing, as determined by an audiologist, otologist, or otolaryngologist, shall be demonstrated by a 25 decibel HL threshold (ANSI, 69) or worse for one or more of the frequencies 250-8000HZ, in one or both ears.
- (e) A speech or language impairment shall be demonstrated by significant deficits in listening comprehension or oral expression. The Evaluation and Planning Team shall obtain an opinion from a licensed speech-language pathologist as to the existence of a speech or language impairment and its effect on the student's ability to function. The determination of a speech or language impairment shall be based on the following criteria:
 - (l.) Listening comprehension - a significant deficit in listening comprehension exists when a student demonstrates a deficit of 2.0 standard deviations from the test mean on one or more measures of auditory processing or comprehension of connected speech. Auditory processing or comprehension include:
 - . semantics
 - . syntax

- . phonology
- . recalling information
- . following directions
- . pragmatics.

(ii.) Oral Expression - A significant deficit in oral expression exists when a child demonstrates one or more of the following conditions:

(1) Voice: A significant deficit in voice which exists when both of the following are present:

(a) documentation by an otolaryngologist as to the status of any vocal pathology or speech related medical condition that treatment is not contraindicated, and

(b) abnormal vocal characteristics in pitch, quality, nasality, volume or breath support which persist for at least one month.

(2) Fluency: A significant deficit in fluency which exists when the student exhibits one or more of the following behaviors:

(a) part word repetitions or sound prolongations occur on at least 5% of the words spoken in two or more speech samples; or

(b) sound or silent prolongations exceed one second in two or more speech samples; or

(c) secondary symptoms or signs of tension or struggle during speech which are so severe as to interfere with the flow of communication.

(3) Articulation: A significant deficit in articulation attributed to an organic or functional disorder which exists when a student is unable to articulate two or more of the unrelated phonemes in connected speech, set forth below, and it is not attributed to dialect or second language differences.

Age	Phonemes
6.0 - 6.11	m,n,h,w,p,b,t,d,g,f,k,v,t,j, (y), t, , (ch), , th
7.0 - 7.11	, (sh), d , (j)
8.0 - above	l,r, o, (th), and l, r consonant blends z, , (zh), s and s consonant blends

(4) Oral Discourse: A significant deficit exists when a student demonstrates a deficit of 2 standard deviations from the test mean on one or more measures of oral discourse. Oral discourse includes:

- . syntax
- . semantics
- . phonology
- . pragmatics.

(f) An orthopedic impairment shall be the result of congenital anomaly, disease, or other condition. The Evaluation and Planning Team shall obtain an opinion from a licensed physician as to the existence of the orthopedic impairment and its effect on the student's ability to function.

(g) A chronic or acute health impairment shall be sufficiently severe to limit a student's strength, vitality, or alertness. The Evaluation and Planning Team shall obtain a physician's opinion regarding the existence of the chronic or acute health impairment and the effect it has on the student's ability to function.

(h) An emotional-behavioral disability shall be identified by the occurrence of one or more of the following conditions exhibited over a long period of time and to a marked degree:

- (1) an inability to learn which cannot be explained by intellectual, sensory, or health factors;

- (2) an inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
- (3) inappropriate types of behavior or feelings under normal circumstances;
- (4) a general pervasive mood of unhappiness or depression; or
- (5) a tendency to develop physical symptoms or fears associated with personal or school problems.

The Evaluation and Planning Team shall obtain an opinion of a licensed psychologist or psychiatrist as to the existence of an emotional behavioral disorder, based on the above criteria, and its effect on the student's ability to function.

The term does not include children who are socially maladjusted unless it is determined that they are otherwise emotionally-behaviorally disabled. Upon determination of the existence of an emotional-behavioral disability, the parent shall be informed of the right to interagency coordination of services, as defined by 33 V.S.A. §4301 et seq.

- (i) Autism shall be defined as a developmental disability which significantly affects verbal and non-verbal communication and social interaction, generally evident before age three, that includes the following characteristics: irregularities and impairments in communication, engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The condition does not include children with characteristics of the disability of an emotional-behavioral disability, as defined in paragraph (h), of this section. The Evaluation and Planning Team shall obtain an opinion of a licensed physician as to the existence of autism and its effect on the student's ability to function.
- (j) Traumatic brain injury shall be an injury to the brain caused by an external physical force or by an internal occurrence such as stroke or aneurysm resulting in total or partial functional disability or psychosocial maladjustment. The Evaluation and Planning Team shall obtain an opinion of a licensed physician as to the existence of

a traumatic brain injury and its effect on the student's ability to function, according to the following criteria:

The condition includes open or closed head injuries and has resulted in impairments in one or more areas, including cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual and motor abilities; psychosocial behavior; physical functions; information processing; and speech.

The condition does not include brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

2362.2 Comprehensive Evaluation.

2362.2.1 Definition and Purpose.

A comprehensive evaluation is a compilation of information (Rule 2362.2.6) about a student (Rule 2362.2.4) that is designed to:

- (a) assist the Evaluation and Planning Team in determining eligibility for special education;
- (b) assist IEP participants in developing instructional goals and objectives;
- (c) assist IEP participants in designing an appropriate placement in the least restrictive environment; and
- (d) assist instructors in making accommodations in curriculum, materials, and mode of presentation.

2362.2.2 Personnel.

- (1) Comprehensive evaluations shall be arranged for or conducted by an Evaluation and Planning Team (Rule 2364.1) with assistance, where appropriate, from other specialists (psychological, medical, etc.).
- (2) Parents are members of the Evaluation and Planning Team, and shall be given a meaningful opportunity to contribute information to the development of an evaluation plan.

2362.2.3 Time Frame

- (1) When a responsible agency receives or initiates a referral for a comprehensive evaluation for a student who may be eligible for special education, an Evaluation and Planning Team shall be convened without undue delay.
- (2) The comprehensive evaluation shall be completed within 60 calendar days. If completion of the evaluation will be delayed for a period exceeding 60 days from the date when parental consent for an initial evaluation is obtained, the parent shall be given written notice of the delay and a schedule of evaluation activities. Such notice shall be sent to parents before the expiration of the 60-day period.

2362.2.4 Evaluation and Procedures.

In conducting a comprehensive evaluation or arranging for its conduct, the Evaluation and Planning Team shall compile sufficient and appropriate information so that necessary judgments concerning eligibility, placement, program planning, and accommodations can be made.

- (1) Prior to conducting an evaluation, the Evaluation and Planning Team shall complete an evaluation plan which lists the areas to be evaluated and the procedures to be used in carrying out the evaluation. No area shall be evaluated nor shall any evaluation activity be carried out unless appropriate justification can be given for it.
- (2) The Evaluation and Planning Team, where appropriate, shall evaluate or arrange to evaluate all student characteristics that may have a significant influence on eligibility, services to be offered or accommodations to be made, including, but not limited to:
 - (a) physical characteristics
 1. vision
 2. hearing
 3. motor abilities

- 4. health/medical status
 - (b) language characteristics
 - 1. ability to express ideas orally and in writing
 - 2. ability to comprehend oral and written language
 - (c) emotional/behavioral characteristics
 - (d) current life circumstances
 - 1. support received from peers, home, teachers, etc.
 - 2. family, community, and environmental factors that may influence learning and motivation
 - (e) intellectual characteristics and adaptive behavior
 - (f) current level of performance in all curriculum areas for which specially designed instruction or special accommodations may be required.
- (3) The Evaluation and Planning Team shall evaluate instructional practices and/or curriculum requirements that may need to be modified to accommodate the student's unique disabilities.
- (4) For an individual with a suspected learning disability, a classroom observation pursuant to this rule is required; for all other categories of disability such an observation is optional. When the evaluation plan provides for an observation such observation shall be conducted in accordance with the following requirements.
- (a) Where the student is in attendance at a school, that student's classroom behavior shall be observed and reported in writing by trained personnel, other than the student's teacher. The report should address observations of and relationships among the following:
 - (l) classroom environment;

- (ii) teacher and peer interactions;
 - (iii) ability of student to benefit from materials, curriculum and instructional methods;
 - (iv) ability to follow oral and written directions;
 - (v) ability to communicate ideas in oral and written form;
 - (vi) ability to attend to instruction and complete assignments on time; and
 - (vii) other observable student characteristics or instructional conditions that may adversely affect the student's rate of learning.
- (b) Students who are enrolled in a program of home study or who receive instruction delivered in a home, hospital, preschool or child care setting may be observed in their instructional environment by trained personnel. This observation shall be reported in writing to the Evaluation and Planning Team and shall describe the observations outlined in Rule 2362.2.4(4)(a)(I)-(vii).
- (c) If, after reasonable efforts have been made, it is not possible for a responsible agency to conduct a classroom observation due to chronic truancy or other extenuating circumstances, the responsible agency shall document the efforts made to observe the student in an instructional environment.

2362.2.5 General Requirements for Evaluations

For purposes of these rules, "evaluation procedures" are defined as observation and other diagnostic measures.

- (1) Evaluation procedures shall be conducted by persons who are trained in administering evaluation procedures and in, scoring and interpreting the results in conformance with the instructions provided by their producer.

- (2) Tests shall be selected and administered so as best to ensure that when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors which the test purports to measure).
- (3) Test results and other evaluation results shall be interpreted by utilizing the band of confidence and standard error of measurement in reporting test scores.
- (4) Evaluation procedures shall be provided and administered in the child's native language or other mode of communication unless it is clearly not feasible to do so.
- (5) Evaluation procedures shall include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient.
- (6) Evaluation procedures shall be selected and administered so as not to be racially or culturally discriminatory.
- (7) Specific tests shall be valid for the purpose for which they are used and for the individual to whom they are administered.
- (8) No single evaluation procedure shall be used as the sole criterion for determining special education eligibility.

2362.2.6 Evaluation Plan and Report

When all necessary information is collected, the Evaluation and Planning Team shall reduce its findings and conclusions to writing for use in determining special education eligibility and for use by IEP participants, pursuant to Rule 2364.2. The Evaluation Plan and Report shall include the following information:

- (1) a conclusion as to whether or not the student is eligible for special education;

- (2) the evaluation procedures used including a description of any modifications or changes from the evaluation procedures specified in the evaluation plan to the evaluation procedures used;
- (3) a summary of all educationally relevant information collected during the evaluation, including educational, medical and psychological information and a summary of other factors considered;
- (4) recommendations as to the need for accommodations in evaluation procedures, curriculum, material, or programmatic adaptation, behavior management interventions, and supplemental aids and services;
- (5) the signatures of all team members indicating agreement or disagreement with the eligibility conclusion and a statement of the reasons for any disagreement; and
- (6) the written report of an observation of the student in accordance with Rule 2362.2.4.

2362.2.7 Students Who Are Determined to Have a Disability But Not to be Eligible for Special Education.

When an Evaluation and Planning Team determines that a student has a disability, pursuant to Rule 2362.1, but is not eligible for special education, recommended accommodations, as needed, in such areas as evaluation procedures, curriculum, material or programmatic adaptations, behavior management interventions, and supplemental aids and services shall be included in the written Evaluation and Report, in accordance with Rule 2362.2.6. The Evaluation Plan and Report for such a student shall be referred to the student's building administrator who shall arrange for the planning of those accommodations in accordance with Rule 1251.

2362.2.8 Comprehensive Re-evaluation and Supplemental Evaluation.

- (1) A Comprehensive Re-evaluation of eligibility is required at least every three years to determine eligibility. The Re-evaluation shall be done more frequently if conditions warrant or if the student's parent or teacher requests a re-

determination of eligibility. It shall be conducted in accordance with the requirements and procedures set forth in Rules 2362.2.1 - 2362.2.2. and Rules 2362.2.4 - 2362.2.6. The re-determination of eligibility shall be based on currently valid test results. The re-evaluation shall be completed without undue delay. When the comprehensive re-evaluation will be delayed for a period exceeding 60 calendar days from the date when notice of the evaluation was sent to the parents, the parents shall be given written notice of the delay and a schedule of evaluation activities. Such notice shall be sent to parents before the expiration of the 60 day period. The notice of delay shall not extend the date of completion for a comprehensive re-evaluation beyond the three year period. The re-evaluation must be completed by the anniversary date of the last comprehensive evaluation.

- 2362.2.8 (2) A Supplemental Evaluation is a type of comprehensive re-evaluation that shall be conducted by an Evaluation and Planning Team whenever a responsible agency or a parent proposes to significantly change a student's IEP placement. The purpose of a Supplemental Evaluation is to gather information to assist the IEP participants in their consideration of the proposed significant change in placement. Because eligibility is not addressed through a Supplemental Evaluation, it shall be conducted in accordance with the requirements and procedures set forth in Rule 2362.2.2 (Personnel), Rules 2362.2.5 (General Requirements), Rule 2364.3.1 (Notice) and the following procedures:
- (a) the last comprehensive evaluation shall be reviewed by the student's Evaluation and Planning Team and supplemented, when necessary, in order to provide information that will assist the IEP participants in considering the proposed significant change of placement.
 - (b) prior to conducting a supplemental evaluation or arranging for its conduct, the Evaluation and Planning Team shall develop a written evaluation plan which lists the areas to be evaluated and the procedures to be used in carrying out the evaluation. If no further evaluation procedures are warranted, the evaluation

may consist of a review of the student's records and a gathering of anecdotal information.

- (c) the Supplemental Evaluation shall be completed within 60 days of notice of evaluation unless a written notice of delay is given to the parents before the expiration of the 60 day period.
- (d) the Evaluation and Planning Team shall complete a Supplemental Evaluation Plan and Report which contains a summary of all educationally relevant information collected, including educational, medical or psychological information and other factors considered regarding the proposed significant change of placement. This report does not include an eligibility decision.
- (e) upon completion of the Supplemental Evaluation, the responsible agency shall provide the Supplemental Plan and Report to the parents, prior to the IEP participants deciding upon a significant change of placement.
- (f) a Comprehensive Re-evaluation shall be conducted for an eligible student at least every three years or in accordance with the other requirements of Rule 2362.2.8 notwithstanding any intervening Supplemental Evaluation.
- (g) the term "significant change in placement" is an educational change that includes, but is not limited to:
 - (i) suspension that results in the removal of an IEP student from school for more than 10 consecutive days during a school year. Ten cumulative days of suspension in a school year shall also be considered to be a significant change of placement unless the IEP participants document the basis for a conclusion that it is not a significant change of placement. (Rule 4312);
 - (ii) expulsion, (Rule 4311);

- (iii) graduation;
 - (iv) retention, when the student's IEP participants determine that it constitutes a significant change in placement; and
 - (v) a change in placement to significantly more or less restrictive environment.
- (h) A significant change in placement does not result solely from:
- (i) a change of schools or classrooms; or
 - (ii) grade promotion.
- (l) (l) A student on an IEP who is in the care and custody of a state agency or a licensed child placement agency shall receive a Supplemental Evaluation if:
- (a) he or she is currently, or was last placed, in a public or independent day school; and
 - (b) he or she is proposed for, or has already been placed in, a 24-hour residential facility that will also provide the student's education.
- (ii) The purpose of this Supplemental Evaluation is to provide information to the student's IEP participants so that they are able to consider the proposed significant change of placement, even if it has already occurred as a result of the custodial agency's action.
- (iii) The responsible agency shall notify the Commissioner when the student's IEP participants, after considering the Supplemental Evaluation Report, determine that the student's IEP cannot be adequately implemented at the

residential facility.

2363 General Program Requirements

2363.1 Local Educational Agency Plan (LEAP). Each supervisory union which receives state or federal funds for special education shall submit a local education agency plan as required by the U.S. Department of Education.

2363.1.1 Required Forms. The Commissioner shall issue a list of required and suggested special education forms. Responsible agencies shall use the special education forms which the Commissioner designates for required use.

2363.2 Child Count. Each responsible agency shall submit annually to the Department of Education a list of all students who have been found eligible for special education and are receiving special education services in accordance with an Individualized Education Program.

2363.3 Individualized Education Program. The responsible agency shall provide special education and related services to eligible students with disabilities in accordance with an individualized education program (IEP) using the information from the comprehensive evaluation, re-evaluation or supplemental evaluation. The IEP shall be developed or revised at an IEP meeting (Rule 2364.2.1). An IEP based on a student's needs shall be developed for each student with a disability and shall include a statement of:

- (1) present levels of educational performance;
- (2) at least one annual goal, including at least two short-term instructional objectives for each annual goal;
- (3) appropriate objective criteria and evaluation procedures and schedules for at least annually determining whether short-term instructional objectives are met;
- (4) the specific special education and related services to be provided, including the extent to which the student will be able to participate in regular educational programs;
- (5) documentation of a discussion concerning Least Restrictive Environment (LRE);
- (6) accommodations, in as many areas as needed to assure the student's

participation in the regular education program, including evaluation procedures, curriculum, material and programmatic adaptations, behavior management interventions, and supplemental aids or services; and

- (7) the projected dates for initiation of services and the anticipated duration of services.

2363.3.1 Development Time.

An IEP shall be developed within 30 calendar days following determination of eligibility by the Evaluation and Planning Team. Rules 2364.1 and 2364.2.

2363.3.2 Least Restrictive Environment Requirements for IEP.

- (a) Where the student's placement is a residential placement the student's IEP shall contain annual goals and objectives designed to reintegrate the student into a local school district placement, and a description of how such goals and objectives will lead to reintegration.
- (b) Where a student's placement results in his or her removal from the regular education environment for more than 50% of the student's school week, the IEP shall contain annual goals and objectives designed to reintegrate the student into the regular education environment at the earliest appropriate opportunity.

2363.3.3 Transition Services in the IEP

- (a) In accordance with the regulations at 2364.2.2(3); 2364.2.3 and 2364.2.4, the IEP for each student, beginning no later than age 16 (and at a younger age, if determined appropriate), must include a statement of the needed transition services, including, if appropriate, a statement of each public agency's and each participating agency's responsibilities or linkages, or both, before the student leaves the school setting.
- (b) Transition services means a coordinated set of activities for a student, designed within an outcome-oriented process, that promotes movement from school to post-school activities,

including, but not limited to:

- (1) postsecondary education,
- (2) vocational training,
- (3) integrated employment including supported employment,
- (4) continuing and adult education,
- (5) adult services
- (6) independent living, or community participation.

(c) The coordinated set of activities must:

- (1) be based on the individual student's needs, taking into account the student's preferences and interests; and
- (2) include, but not be limited to:
 - (a) instruction;
 - (b) community experiences;
 - (c) the development of employment and other post-school adult living objectives; and
 - (d) if appropriate, acquisition of daily living skills and a functional vocational evaluation.

If the IEP participants determine that services are not needed in one or more of the areas specified in (2) (a) through (c), the IEP must include a statement to that effect and the basis upon which the determination was made.

2363.4 Least Restrictive Environment (LRE).

2363.4.1 General Requirements.

Each responsible agency shall educate students with disabilities to the maximum extent appropriate with their non-disabled, chronological age peers in the schools they would attend if they did not have a disability. Barriers to the participation of students with disabilities in the regular education environment shall be addressed whenever possible by the provision of accommodations, (Rule

2360.2.1) and supplemental services rather than by placement in separate programs. Removal of students from the regular education environment shall occur only when and to the extent that education in regular classes, even with the use of accommodations cannot be achieved satisfactorily. (Rule 2360.2.1).

2363.4.2 Continuum of Alternative Placements.

Each responsible agency shall insure that a continuum of alternative placements is available to meet the special education needs of students with disabilities.

2363.4.3 Procedures.

It is the responsibility of the IEP meeting participants to consider alternative placements and to determine placements for students with disabilities which represent the least restrictive environment. In selecting the least restrictive environment, the IEP meeting participants shall insure that consideration is given to any potential harmful effect on the student or on the quality of services which he or she needs.

Placements shall be made on an individual rather than a categorical basis.

2363.4.4 LRE for Non-Academic and Extracurricular Activities.

In providing or arranging for the provision of nonacademic and extra-curricular services and activities, the responsible agency shall insure that an eligible student participates with non-disabled students in those services and activities to the maximum extent appropriate to the needs of that student.

2363.5 (Reserved)

2363.6 Instruction for Homebound or Hospitalized Special Education Students.

- (1) Preschool children who are homebound or hospitalized and, due to a medical condition, are unable to access the essential early education services outlined in their current IEP, shall receive direct

instruction as determined by the child's IEP participants.

- (2) Homebound or hospitalized elementary special education students and elementary special education students with IEPs calling for tutorial services outside school shall receive instruction for no less than six hours per week unless inconsistent with medical and/or educational recommendations pursuant to the student's IEP.
- (3) Homebound or hospitalized secondary special education students and secondary special education students with IEPs calling for tutorial services outside school, shall receive instruction for no less than an average of two hours per subject per week unless inconsistent with educational or medical recommendations pursuant to the student's IEP.

2364 Program Procedural Requirements.

2364.1 Evaluation and Planning Team. An Evaluation and Planning Team will be appointed by the responsible agency to perform or arrange for a comprehensive evaluation of the student's needs and abilities and to determine eligibility pursuant to Rule 2362. Decisions will be made by consensus. In an event that an agreement cannot be reached by the Evaluation and Planning Team, the responsible agency will offer a decision. All members retain the right to file a dissenting report. The team shall consist of:

- (1) the student's teacher;
- (2) a person with knowledge in the area of the student's suspected disability;
- (3) parents,
- (4) the student, where appropriate, and
- (5) other individuals at the discretion of the responsible agency, the parent, or the student, where appropriate.

2364.2 Individualized Education Program Meeting.

2364.2.1 IEP Meeting.

Each responsible agency shall initiate and conduct meetings for the purpose of developing, reviewing, and revising an individualized education program (IEP). At least one member of a student's Evaluation and Planning Team should participate in the student's IEP meeting unless written justification is made as to why this is not feasible. If the student is being evaluated for the first time and a member of the Evaluation and Planning Team is not available to participate in the student's IEP meeting, some person who is knowledgeable about the evaluation procedures used with student and is familiar with the results of the evaluation, must attend the IEP meeting. The responsible agency shall take steps to insure that the following participants are afforded the opportunity to participate in each IEP meeting:

- (1) the student's teacher;
- (2) a representative of the responsible agency, other than the student's teacher, who is qualified to provide or supervise the provision of special education;
- (3) one or both of the student's parents, pursuant to Rule 2364.2.2.;
- (4) the student, where appropriate; and
- (5) other individuals at the discretion of the parent, the agency or, the student, where appropriate.

2364.2.2 Parent Participation.

Each responsible agency shall take steps to insure that one or both parents are present at each IEP meeting or are given the opportunity to participate. Upon completion of the Evaluation Plan and Report, the responsible agency shall provide to the parents, prior to the IEP meeting, the Evaluation Plan and Report concerning their child.

- (1) Parents shall be notified early enough to insure that they will have an opportunity to attend. The notice shall indicate the purpose, time, and location of the meeting, and who will be in attendance.
- (2) Meetings shall be scheduled at a mutually agreed upon time

and place.

- (3) If a purpose of the meeting is the consideration of transition services for a student, the notice must also:
 - (a) indicate the purpose;
 - (b) indicate that the student is invited to attend; and
 - (c) identify any other agency that will be invited to send a representative
- (4) If neither parent can attend, the responsible agency shall use other methods to insure parent participation including individual or conference telephone calls.
- (5) A meeting may be conducted without a parent in attendance if the responsible agency is unable to convince the parents that they should attend. In this case, the responsible agency shall have a record of its attempts to arrange a mutually agreed upon time and place.
- (6) The responsible agency shall take whatever action is necessary to insure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English.
- (7) In the event that an agreement on an IEP cannot be reached by the IEP participants, the responsible agency shall offer an IEP for implementation.
- (8) The responsible agency shall give the parent a copy of the IEP.

2364.2.3 Student Participation - Transition Services

- (1) If the purpose of the IEP meeting is the consideration of transition services for a student, the public agency shall invite:
 - (a) the student; and
 - (b) if the student does not attend, the LEA shall take other steps to ensure that the student's preferences and

interests are considered and documented.

2364.2.4 Agency Participation - Transition Services

- (1) If the purpose of the IEP meeting is the consideration of transition services for a student, the LEA shall invite --
 - (a) a representative of any other agency that is likely to be responsible for providing or paying for transition services; and
 - (b) if an agency invited to send a representative to a meeting does not do so, the public agency shall take other steps to obtain the participation of the other agency in the planning of any transition services.
- (2) If a participating agency fails to provide agreed-upon transition services contained in the IEP of a student with a disability, the public agency responsible for the student's education shall, as soon as possible, initiate a meeting for the purpose of identifying alternative strategies to meet the transition objectives and, if necessary, revising the student's IEP.
- (3) Nothing in this part relieves any participating agency, including a State vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

2364.3 Parental Rights.

2364.3.1 Notice.

- (1) The responsible agency shall provide written notice to the parent or guardian of a student within a reasonable time before it proposes to initiate or change, or refuses to initiate or change a student's identification, evaluation, educational placement or the provision of a free appropriate public education. This written notice shall contain:
 - (a) a description of the action proposed or refused by the agency,

- (b) an explanation of why the agency proposes or refuses to take the action,
 - (c) a description of any options the agency considered and reasons why these options were rejected,
 - (d) a description of evaluation procedures, tests, records, or reports upon which the action is based, and
 - (e) other factors that are relevant. A written notice to the parent is also required when there will be a delay in the evaluation (Rule 2362.2.3).
- (2) Parents shall be fully informed of all procedures available as safeguards including, but not limited to their right to:
- (a) request a due process hearing and/or mediation to challenge proposed actions and to request costs and attorneys' fees in court if they prevail at the hearing,
 - (b) an independent evaluation of the student in accordance with Rule 2364.3.4. A parent has the right to an independent educational evaluation of the student at public expense if the parent disagrees with the Evaluation Plan and Report conducted or obtained by the public agency. However, the public agency may initiate a hearing under Rule 2364.3.5 to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense, in accordance with Rule 2364.3.4,
 - (c) review and inspect their child's educational records,
 - (d) be given notice when personally identifiable information collected, maintained or used is no longer needed to provide educational services to the student. The notice shall inform the parents of their right to have such information destroyed upon request.
- (3) Notices must be written in language understandable to the general public, and provided in the native language of the

parent, unless it is clearly not feasible to do so. If the native language or other mode of communication of the parent is not a written language, the responsible agency shall take steps to insure that:

- (a) the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;
- (b) the parent understands the content of the notice; and
- (c) there is written evidence that the requirements outlined in (a) and (b) have been met.

2364.3.2 Informed Consent.

The responsible agency shall obtain the informed consent from a student's parent or guardian before conducting an initial evaluation to determine special education eligibility, making an initial placement in a special education program, before personally identifiable information is disclosed to anyone other than officials of participating agencies collecting or using the information, or before personally identifiable information is used for purposes other than that for which permission was originally given. Consent shall not be required for any subsequent re-evaluations or placements or as a condition of any other benefit to the parent or student. Consent, where required, shall be in writing and shall contain the following recitations by the parents indicating that they understand that:

- (1) consent is given voluntarily with the knowledge that it may be withheld for any reason;
- (2) the Evaluation Plan and Report(s) and all IEPs will be available to all educational agencies which in the future provide that student with his or her statutorily guaranteed free and appropriate public education;
- (3) consent to the initial comprehensive evaluation may only be revoked during the duration of the initial evaluation, which includes the period from consent for the initial evaluation through completion of the Evaluation Plan and Report; and

- (4) after parental consent has been given for an initial placement in a special education program, it may be revoked only during the duration of the initial IEP.

2364.3.3 Denial of Consent by Parent. If a parent refuses to give the required written consent for initial evaluation or initial placement in special education, or revokes consent during the initial comprehensive evaluation or initial IEP placement, the responsible agency shall, through the Evaluation and Planning Team or IEP participants, as appropriate, consider the reasons for the refusal or revocation and:

- (1) if the responsible agency agrees with the parent, the proposal to evaluate or to initially place in special education shall be withdrawn, with justification documented in the student's record; or
- (2) if the responsible agency disagrees with the parent, it shall request a due process hearing to determine whether the proposed initial comprehensive evaluation or placement in special education is appropriate. A due process hearing officer has the authority to order the initial evaluation or placement without parental consent.

2364.3.4 Independent Educational Evaluation. A parent has the right to request an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the responsible agency. Parents may request an independent evaluation only after the Evaluation and Planning Team has completed its evaluation and issued a report (Rule 2362.2.6). Parents shall be informed, upon request, about where an independent evaluation may be obtained. The responsible agency shall either agree to assume the cost of an independent evaluation or initiate a hearing to show that its evaluation is appropriate. If it is proven appropriate, the parent still has the right to an independent educational evaluation, but not at public expense. If the parent obtains an independent educational evaluation at public or private expense, the results of the evaluation:

- (1) must be considered by the responsible agency in any decision made with respect to the provision of a free appropriate public education to the student; and
- (2) may be presented as evidence at a hearing under this subpart

regarding that student.

If a hearing officer requests an independent evaluation, it shall be provided at public expense.

Whenever an independent evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the public agency uses when it initiates an evaluation.

2364.3.5 Impartial Due Process Hearing. A parent, guardian, or responsible agency may initiate an impartial due process hearing regarding the identification, evaluation, placement of the student in a special educational program, or the provision of a free appropriate public education by addressing such request in writing to the Commissioner. The request for hearing shall state the specific factual and legal basis for each claim asserted.

- (1) The Commissioner may initiate an impartial due process hearing in accordance with 16 V.S.A. § 2958 (c)(1). The Commissioner may also intervene in a due process proceeding upon a showing that his or her interests would be affected by the outcome of the case.
- (2) The hearing shall be conducted in accordance with the requirements of 34 CFR Sections 300.506-513 and shall be considered to be a formal proceeding subject to the provisions of 3 VSA Chapter 25 on Administrative Procedure, §809 et seq., and Rule 1230 et seq., except for Rules 1236.1 and 1236.2.
- (3) The decision of the hearing officer is final unless appealed to a state or federal court of civil jurisdiction.

2364.3.6 (Reserved)

2364.3.7 Complaint Procedure.

Any person, agency or organization alleging that a responsible agency has acted contrary to the requirements of state and/or federal

special education law may file a complaint with the Commissioner of Education. A copy of the complaint shall be forwarded by the Commissioner to the responsible agency.

Upon receipt of a complaint, the Commissioner shall appoint a complaint investigator to conduct an investigation. The complaint investigator shall examine evidence presented on behalf of the complainant and on behalf of the responsible agency and, upon request of a party, and at the discretion of the complaint investigator, shall schedule a meeting, hearing or an on-site investigation. If a hearing is scheduled, the complaint investigator shall have all the powers and duties set forth in Rule 1236.1. The complaint investigator shall present findings to the Commissioner in writing within 50 days from receipt of the complaint and the Commissioner shall render a decision and order within 10 days thereafter. The above time limits may be extended only if exceptional circumstances exist with respect to a particular complaint. A decision of the Commissioner may be reviewed by the Secretary of the United States Department of Education upon the request of an aggrieved party.

The investigation for any complaint filed pursuant to Part H of Federal Regulations (provision of services for infants and toddlers), shall be completed in coordination with the Agency of Human Services as co-lead agency.

If a responsible agency fails to comply with the Commissioner's order, the Commissioner may impose appropriate sanctions including, but not limited to, the following:

- (1) withhold federal flow through monies that are generated under IDEA's (P.L. 101-476) formula assistance program;
- (2) make alternative arrangements for providing an IEP service and withhold the cost of such service from the state funds otherwise granted to the agency; and
- (3) withhold accreditation or program approval.

2364.3.8 Mediation.

2364.3.8.1 Department Mediation Service.

Pursuant to 16 VSA § 2959, the Vermont Department of Education shall provide mediation, through its Special Education Mediation Service (VDE-SEMS), to parents of students with disabilities, adult students with disabilities, school districts and educational agencies involved in special education disputes.

2364.3.8.2 Mediation Procedures and Rules.

- (1) Requests for mediation shall be in writing and submitted to the Vermont Department of Education, Special Education Mediation Service (VDE-SEMS), 120 State Street, Montpelier, Vermont 05620-2501.
- (2) Requests for mediation may be filed jointly or by one party.
- (3) The VDE-SEMS shall assign a mediator, from its roster of impartial special education mediators, within 10 days of receipt of a joint written request for mediation or upon receipt of one party's written request and telephone confirmation by the other party.
- (4) The VDE-SEMS shall send each parent who requests mediation the state-mandated Parents Rights Notice Form. VDE-SEMS shall send its mediation procedures to all parties.
- (5) Mediation may be terminated at any time by either of the parties or by the mediator.
- (6) With the consent of the parties, the Vermont Department of Education may be a party to mediation.
- (7) Representatives of the responsible agency and parents may bring legal counsel to mediation. Parents may also bring an advocate, support person, and/or family members. Each party to mediation shall ensure that a person in attendance has decision-making authority for the party.
- (8) At all times during the course of mediation, the responsible agency shall ensure the provision of a free appropriate public education to the student.
- (9) The agreement to mediate shall be in writing on a form prescribed by the Commissioner and signed by all parties.

- (10) The mediation process is confidential. Therefore:
 - (a) the mediator shall not be called as a witness in any future administrative or court proceeding to testify regarding any information gained during the course of mediation.
 - (b) statements made at the mediation shall not be used at a future administrative or court proceeding.
- (11) If agreement is reached as to issues in dispute between the parties, that agreement shall be in writing and signed by all parties and the mediator.
- (12) The mediation agreement shall be confidential unless otherwise specified.
- (13) Notwithstanding Rule 2364.3.7.2(12):
 - (a) the mediation agreement shall become a part of the child's educational record subject to 34 CFR Part 99, et seq.
 - (b) where breach of a mediation agreement is the subject of a Vermont Department of Education commissioner complaint, per Rule 2364.3.7, or a due process hearing, per Rule 2364.3.5, the mediation agreement may be offered as evidence in that proceeding.
- (14) When a request for a due process hearing under Rule 2364.3.5 is received, the VDE-SEMS shall offer its mediation services as an alternative. Even if mediation is requested, a hearing officer shall be assigned for all due process requests.
- (15) A request for mediation may be made at any stage of due process proceedings, including due process hearing, administrative review or court review.
- (16) Parties to a due process proceeding who elect to mediate the issues shall arrange directly with the hearing officer any continuances required in scheduling the due process hearing.
- (17) The Commissioner may issue mediation procedures consistent with these rules.

- (18) The Commissioner may request from a responsible agency that is a party to a mediation a financial contribution for the costs of mediation.

2365 (Reserved)

2366 State Funding for Special Education

2366.1 Special Education Service Plan.

- (1) On or before October 15th of each year, each superintendent shall file a Special Education Service Plan with the Commissioner of Education, as required by 16 V.S.A. §2964.
- (2) The Special Education Service Plan shall provide information about the anticipated programs and services to be provided for students with disabilities and the anticipated costs of those programs and services in the next fiscal year.
- (3) The service plan shall be submitted in a form and manner prescribed by the Commissioner, and at minimum, shall contain the following:
 - (a) anticipated programs and services which will be made available by the supervisory union/supervisory district;
 - (b) anticipated extraordinary services costs; and
 - (c) anticipated total expenditures for each school district within the supervisory union/supervisory district, as well as the union/district itself.

2366.2 Expenditures Allowable for State Reimbursement.

Expenditures allowable for state reimbursement for special education services provided to elementary and secondary students and for extraordinary services provided to Essential Early Education children.

2366.2.1 Purpose.

This rule defines allowable costs for state reimbursement for special education services provided to elementary and secondary students and for state reimbursement for extraordinary services provided to essential early education children under the following:

- (1) Mainstream Block Grant and matching local funds under 16 V.S.A. § 2961;
- (2) Extraordinary services reimbursement and the matching local funds under 16 V.S.A. § 2962; and
- (3) Intensive services expenditures under 16 V.S.A. § 2963.

2366.2.2 Instructional Services.

Unless otherwise provided by this rule, allowable expenditures for instructional services must be required by a student's IEP and are as follows:

- (1) salaries and benefits of licensed special education teachers and instructional aides for the time they carry out special education responsibilities as approved by the Commissioner for the current school year and the salaries and benefits of teachers and aides up to the number of core staff established pursuant to the following:
 - (a) the core staff level shall be established by the Commissioner for each school district. The full-time equivalent number of licensed special education teachers and special education program aides employed for providing mainstream special education services during school years 1990-1991 and 1991-1992, shall be utilized to determine each school district's core level staff.
 - (b) for the salaries and benefits of the core staff to be considered eligible costs, the staff must be providing: special education services; supplementary aids and services pursuant to Section 504 of the Rehabilitation Act; direct services to students in need of classroom support as determined by the Educational Support Team; and consultation services to meet the needs of students eligible for special education services, Section 504 services or educational support services;
- (2) salaries and benefits for services of individual aides for the

portion of time they carry out special education responsibilities;

- (3) contracted services to provide special education instruction to students with disabilities;
- (4) student transportation which is required to implement a part of the instructional program for students with disabilities;
- (5) the portion of non-collaborative tuition of special education programs and excess costs charged by public schools which relate to allowable costs;
- (6) the collaborative tuition for special education programs charged by public schools;
- (7) tuition and all reasonable and necessary costs of placement, as defined in Rule 2366.2.6, excluding any regular education tuition in an independent school approved for the purpose of providing special education in accordance with 16 V.S.A. §2958(e) and Rule 2228, et seq.;
- (8) travel of special education personnel relating to educating students with disabilities as allowed by their local contractual agreement;
- (9) special textbooks, workbooks, other classroom supplies and other instructional materials for a student with disabilities to the extent required by a student's IEP; and
- (10) the reasonable cost of rental, purchase and maintenance of specialized equipment for a student with disabilities required by the IEP and not otherwise available at no cost to the parent through any other sources.

2366.2.3 Related Services.

Expenditures for related services as defined in state and federal law are allowable if they meet the following conditions:

- (1) the cost is for a related service required by the student's IEP, including transportation to and from home for students with

disabilities who cannot be accommodated by regular school bus service;

- (2) the cost is for services provided by personnel beyond those required by the non-special education Public School Approval Standards (e.g. counseling, nursing); and
- (3) the cost is not reimbursed by another source.

2366.2.4 Special Education Administration.

Allowable expenditures for special education administration are as follows:

- (1) salary and benefits of special education administrators and support staff for time dedicated to administration of the educational program for students with disabilities;
- (2) supplies, office expenses and equipment for special education administration;
- (3) cost of inservice activities relating to special education up to a maximum amount per year established by the Commissioner;
- (4) expense of a telephone in a special education classroom;
- (5) advertising expenses in an amount not to exceed \$1,000 annually per supervisory union; and
- (6) If a supervisory union/district elects not to hire special education administrator(s) and is implementing an alternative organizational plan for the provision of special education administration for a given school year, in order for the cost to be considered an allowable expenditure, the plan must be approved by the Department of Education. The plan shall include a description of the functions and the responsibilities of the staff assigned to special education administration; the time spent on these functions; and the estimated costs to be allocated to special education administration.

2366.2.5 Evaluation Costs.

Reasonable and necessary expenditures for diagnostic medical services, other tests and associated costs when part of the comprehensive evaluation, re-evaluation, supplemental evaluation or independent evaluation are allowable.

2366.2.6 Costs of Placement in Approved Independent Schools.

Reasonable and necessary costs of a placement in an independent school approved for the purposes of providing special education, pursuant to Rule 2228, et seq., excluding any regular education tuition, are allowable costs in accordance with the following provisions:

- (1) tuition and other costs associated with attendance at an independent school may not be reimbursed under subchapter 2 of Chapter 101 of Title 16 of Vermont Statutes Annotated, unless the school is approved by the State Board of Education for the purpose of providing special education and related services, pursuant to Rule 2228, or unless such placement is required by a due process hearing order or court order.
- (2) costs at an independent school that is approved for special education purposes which are covered by a written agreement, as referenced by Rule 2228.4.(2), and are at a rate approved by the Commissioner or the State Board of Education, pursuant to Rule 2228.8, are allowable costs with the exclusion of any regular education tuition.
- (3) tuition and other costs associated with attendance at an approved independent school that is not approved for special education purposes, may be reimbursed under Subchapter 2 of Chapter 101 of Title 16 of the Vermont Statutes Annotated, if the placement was approved as an exception by the State Board of Education in accordance with Rule 2228.2(2).

2366.2.7 Ineligible Costs.

The following are not eligible for reimbursement:

- (1) attorney's fees and other legal costs;
- (2) overhead costs meaning building operations, general

administration, and business services except for collaborative tuition, and then only to the extent that overhead costs in collaborative programs do not exceed 20% of the total program costs;

- (3) funds paid to union schools or supervisory unions by member school districts as assessments for special education;
- (4) any costs not allowable under Rules 2366.2.2, 2366.2.3, 2366.2.4 and 2366.2.5; and
- (5) any costs for financial accounting and auditing.

2366.2.8 Transition from Residential Placement.

Expenditures for certain transitional services which otherwise would not be reimbursed as allowable costs pursuant to Rule 2366 et seq. may be reimbursed for students who are being returned from residential placement under the following conditions:

- (1) a plan for transitional and educational services shall be submitted to the Commissioner of Education within a reasonable time prior to the change in placement and shall contain a description of the services to be provided and the estimated costs of those services. The contents of the plan shall be consistent with those prescribed by the Commissioner. The plan for transitional services, including estimated costs, must receive approval from the Commissioner in order for reimbursement of the otherwise non-allowable costs to occur.
- (2) the Commissioner's approval of a plan for transitional and educational services shall specify the limit as to the amount that will be reimbursed and the period during which such reimbursement will be made.

2366.2.9 Special Education administration costs shall not be included as a cost of an individual student when reporting and calculating extraordinary special education expenditures.

2366.3 Intensive services expenditures shall mean all expenditures for special education, as defined by rule of the state board, less the following:

- (1) revenue from federal aid for special education under Public Law 101-476, or similar laws on related subjects;
- (2) mainstream service costs, as defined in 16.V.S.A. §2961(c)(1);
- (3) extraordinary special education expenditures, as defined in 16 V.S.A. § 2962; and
- (4) other state funds used for special education costs.

In this section, the term “other state funds” shall mean any state grant source except mainstream block grant, extraordinary services reimbursement, and intensive services reimbursement to which allowable special education expenditures are charged. The other state funds may include, but are not limited to the following:

- (a) regional interdisciplinary team grants,
- (b) regional multi-handicapped specialist grants,
- (c) grants for building effective strategies for teaching students (BEST) pursuant to 16 V.S.A. 2969(c),
- (d) training grants pursuant to 16 V.S.A. 2969(d), and
- (e) school district reimbursement for state-placed students under 16 V.S.A. §2950(a).

2366.4 The supervisory union/district will submit a report for the supervisory union/district and each member school district which expended funds for special education or received block grant funds. The report shall be completed as prescribed by the Commissioner and signed by the superintendent or a person designated by the superintendent. Pursuant to 16 V.S.A. §2968(b), a late fee of \$100 per State business day shall be assessed to each supervisory union/district which does not file a complete final Special Education Expenditure Report for the preceding State fiscal year by the deadline established in statute.

2366.4.1 A supervisory union may appeal the late fee to the Commissioner of

Education. Appeal must be received within 30 calendar days of the due date of the report. The appeal must be in writing and include:

- (1) statement of the reasons why the supervisory union/district was unable to file the complete report by the statutory deadline and
- (2) the action to be taken by the supervisory union/district to ensure that reports will be completed and filed by the due date.

2366.4.2 The appeal shall only be granted if the report is filed at the time of the appeal.

2366.4.3 The Commissioner will either grant the appeal of the penalty in whole or in part or deny the appeal in writing within 60 calendar days of the due date of the report. The Commissioner will not grant an appeal of the late filing fee for the same supervisory union/district for two consecutive fiscal years.

2366.4.4 Any late penalty not forgiven on appeal shall be deducted from any payments due under any funding category covered under Title 16 of the Vermont Statutes Annotated. The penalty incurred by a supervisory union/district shall be divided among its member town(s). The proration of the penalty will depend on which reporting entities within the supervisory union failed to submit final reports by the due date. If two or more reporting entities failed to meet the deadline, the penalty will be divided equally among the late reporting entities. The penalty due to late reports from supervisory unions, joint contract districts and union schools will be divided to the member towns by the same proportion that the total net cost is divided to the member towns. Any penalty attributed to the member towns of a unified union school district will be assessed against the unified union school district.

2366.5 (Reserved)

2366.6 Collaborative Programs; Tuition and Excess Costs

2366.6.1 Collaborative Program Definition and Tuition.

A collaborative program may charge a tuition pursuant to 16 V.S.A.

§826(b). A collaborative program is a program created pursuant to an agreement between two or more supervisory unions in accordance with 16 V.S.A. §267, for the purpose of cooperatively providing special education services. A collaborative program may offer one or more component programs (e.g. multi-handicapped, emotionally disturbed, diversified occupations).

2366.6.2 Collaborative Program Accounting.

The accounting for each collaborative program shall be in accordance with the Handbook for Financial Accounting of Vermont School Systems accounting procedures and:

- (a) an enterprise fund as defined in the Handbook shall be established to account for the funds for each collaborative program;
- (b) notice of tuition shall be provided by the collaborative program to the appropriate school board(s) as set forth in 16 V.S.A. §826(a);
- (c) such tuition notice shall include a description of services to be provided, and the amount of the tuition for each component program;
- (d) tuition shall be proportionally calculated for students who are part-time; and
- (e) final tuition charged shall be calculated based on the actual cost of the program.

2366.6.3 Noncollaborative Tuition

- (a) A school district, a supervisory union and a public school not managed by a school board may charge a special education tuition under 16 V.S.A. §826(b) for providing special education services. However, any such bill for tuition shall state the amount of the bill which is eligible for reimbursement under the state special education funding formula. In the case of a school district, special education tuition may not be charged for a student whose district of residence is the school district. In the case of a supervisory union, special education tuition

may not be charged for a student from within the supervisory union unless otherwise agreed pursuant to 16 V.S.A. §301.

- (b) All the provisions of Rule 2366.6.2 apply to tuition under subsection (a) above, except that:
 - 1) it is permissible but not required that an enterprise fund be established and
 - 2) the notice of tuition establishes the maximum tuition which can be charged. (16V.S.A. §826)

2366.6.4 Excess Costs Procedure.

Excess costs which may be charged under 16 V.S.A. §826(c) are limited to allowable special education costs for services not covered by a regular education tuition or a special education tuition. Allowable special education costs for this purpose are defined in rules §§2366.2.2, 2366.2.3 and 2366.2.5. The following procedures shall apply to excess costs:

- (a) the district or agency responsible for the student's residence shall be given prior notice that an excess cost will be charged;
- (b) notice shall indicate the student's name, type and frequency of service to be provided, fee for services to be provided, and billing schedule;
- (c) excess cost shall be calculated based on the actual costs attributable to the student or proportionate costs in accordance with the Handbook for Financial Accounting of Vermont School Systems accounting and cost allocation procedures; and
- (d) excess costs shall be billed quarterly and final billings for any fiscal year must be submitted to the sending districts prior to June 15th of that fiscal year.

2366.6.5 Allowable Costs Reporting.

For financial and statistical reporting to the Commissioner, the cost reported by a school district for all allowable special education services shall be calculated as the actual cost of services provided

minus the revenue received or due for excess costs.

2366.6.7 Allocation of Attorney's Fees.

All awards, costs and fees associated with a legal proceeding in which a collaborative program is a party shall be borne by the school district of the student's residence unless otherwise agreed upon by the collaborative's members. However, the foregoing shall not be construed to mean that a collaborative or school district shall be responsible for the legal fees of a parent unless ordered by a court or agreed to in mediation.

2366.6.8 Schedule of Special Education Payment and Reporting.

Payments, as required by 16 V.S.A. § 2969, for each [section] component of the state aid for special funding formula, 16 V.S.A. §§ 2961 through 2963, shall be calculated and distributed as follows during each fiscal year:

- (1) Mainstream Block Grants, pursuant to 16 V.S.A. § 2968, shall be distributed on August 15th and December 15th. On each of these dates one-half of the state grant amount shall be forwarded.
- (2) Intensive Services Reimbursement payments shall be made, pursuant to 16 V.S.A. § 2969, on the following schedule and in the amounts as indicated below:
 - (a) by August 15th, 20% of the estimated reimbursement shall be forwarded. The amount shall be based on the recipient's Service Plan pursuant to 16 V.S.A. § 2964.
 - (b) by December 15th, an additional 35% of the estimated reimbursement shall be forwarded. The amount shall be based on the recipient's Service Plan, pursuant to 16 V.S.A. § 2964, and adjusted according to the Special Education Expenditure Report, due on November 15th, pursuant to 16 V.S.A. § 2968.
 - (c) by April 15th, an additional 30% of the reimbursement shall be forwarded, based on the recipient's Service Plan, pursuant to 16 V.S.A. § 2964, and adjusted

according to the second Special Education Expenditure Report, due March 15th, pursuant to 16 V.S.A. § 2968.

- (d) after the close of the fiscal year, the final balance of the reimbursement shall be forwarded, based on the recipient's final Special Education Expenditure Report due on July 15th, pursuant to 16 V.S.A. § 2968.
- (3) Extraordinary Services Reimbursement, pursuant to 16 V.S.A. § 2962, shall be calculated as the amount due based on the recipient's previous Special Education Expenditure Report, pursuant to 16 V.S.A. § 2968. Funds may be advanced in June based on estimated reports of extraordinary service costs.

2366.7 Reimbursement for the Costs of Educating State-Placed Children.

2366.7.1 State-placed Student means:

- (1) A Vermont pupil who has been placed in a school district other than the district of residence of the pupil's parent(s) or guardian or in an approved residential facility by a Vermont state agency, a Vermont licensed child placement agency, a designated community mental health agency or any other agency as defined by the commissioner, or
- (2) A Vermont pupil who:
 - (a) is 18 years of age or older,
 - (b) is living in a community residence as a result of placement by a Vermont state agency, a Vermont licensed child placement agency or a designated community mental health agency, and whose residential costs are paid for in whole or in part by one of these agencies, and
 - (c) resides in a school district other than the district of the pupil's parent or parents, or
 - (d) is a pregnant or postpartum pupil attending school at an approved education program in a residential facility or outside

the school district of residence.

- (3) State-placed student does not include pupils placed within a correctional facility or in the Woodside Juvenile Rehabilitation Center or the Eldred School operated by the Vermont State Hospital.

2366.7.2 School district reimbursement.

- (1) For the costs of educating a state placed student, the school district serving the child shall claim and the commissioner shall reimburse the allowable special education costs, other than costs for mainstream services.
- (2) For the purposes of this section, mainstream services means: learning specialist services, resource room services, speech-language pathology services, and special education administration as defined by 2366.2.4. For the purposes of this section, the following definitions shall apply:
 - (a) "Learning Specialist Services" means those services provided by a learning specialist or by a consulting teacher and include direct instruction or direct supervision of services provided by an aide, in accordance with the kind and amount of such services specified in the student's IEP.
 - (b) "Resource Room Services" means those services provided by a Resource Room Teacher of the Handicapped, and include direct instruction in accordance with the kind and amount of such services specified in the student's IEP.
 - (c) "Speech - Language Pathology Services" means those services provided by a Speech - Language Pathologist and include direct instruction or direct supervision of services provided by an aide or Teacher of the Handicapped in accordance with the kind and amount of such services specified in the student's IEP.
- (3) In addition, reimbursable costs shall include any additional costs which are incurred in educating a state placed student not eligible for special education and are due to the special needs of the student. In order to receive reimbursement for the services provided, the school district must submit the request to the Department of Education on a

form prescribed by the Commissioner. The form will request:

- (a) a description of the team that has worked with the case,
 - (b) a description of the presenting problem, and
 - (c) the written plan of services.
- (4) The Department can recommend approval, request further information, or reject the request with recommendations for other avenues of support.
- (a) If the request has been approved, the school district shall submit to the Department requests for reimbursement which include the student's name, description of services, dates of each service and cost for each service.
 - (b) All requests for a school year must be received by the Department no later than August 1st of the following fiscal year.
 - (c) Decisions may be appealed to the Commissioner of Education.

2366.7.3 Residential Payments

- (1) For a student in the care and custody of the Commissioner of Social and Rehabilitation Services (SRS) who is placed in a 24 hour residential facility within or outside Vermont, the Commissioner of Education shall pay the education costs and the Commissioner of Social and Rehabilitation Services shall arrange for the payment of the remainder of the costs. However, where the State Interagency Team, as defined in 3 V.S.A. §32, has found such placement inappropriate for the student's education needs, the Commissioner of Education shall pay none of the education costs of the placement and the Commissioner of Social and Rehabilitation Services shall arrange for the payment of the full costs of the placement.
- (2) For a student not in the care and custody of SRS, who is placed in a 24 hour residential facility within or outside Vermont by a Vermont licensed child placement agency, a designated community mental health agency, any other agency as defined by the Commissioner of Education, or a Vermont state agency other than the Department of

Corrections or the Department of Social and Rehabilitation Services, the Commissioner of Education shall pay the education costs and the agency in whose care the student is placed shall arrange for the payment of the remainder of the costs. However, where the State Interagency Team, as defined in 3 V.S.A. §32, has found such placement inappropriate for the student's education needs, the Commissioner of Education shall pay none of the education costs of the placement and the agency in whose care the student is placed shall arrange for payment of the full costs of the placement. This subdivision does not apply to a student for whom a residential placement is:

- (a) specified in the student's individualized education program, and
- (b) funded in collaboration with another agency.

2366.8 State Funding for Essential Early Education.

2366.8.1 Essential Early Education programs shall be funded in accordance with 16 V.S.A. §2948(c).

2366.8.2 (a) Each school district shall receive an Essential Early Education grant each year. Grants shall be calculated according to the estimated number of children from 3 through 5 years of age in the school district. The estimated number of children who are 3 through 5 years of age shall be based on the last verified average daily membership of all children enrolled within the district in grades 1 through 3. The Commissioner shall announce the estimated number of children three through five years of age in each school district and the proposed grant allocation amounts by December 15th.

- (b) (1) Essential Early Education grant funds shall be used to provide a free, appropriate, public education to all children within the school district who are three through five years of age and are eligible for special education.
- (2) Once a school district has fulfilled its obligations

under subsection (b)(1) of this rule, then Essential Early Education grant funds may be used:

- (i) to provide Essential Early Education services to any eligible child who is birth through 2.11 years of age; or
 - (ii) to provide services to children who are birth through 5.11 years of age who have been identified as being at risk of school failure.
- (c) Extraordinary services reimbursement will be available for services which are required by an IEP for a child who is 3 through 5 years of age or who will be three years of age before the end of the school year. In order to obtain extraordinary services reimbursement for an eligible child who is in this age group or who will be three by the end of the school year, the school district must demonstrate that an amount of funds equal to their Essential Early Education grant funds has been exhausted on pre-school special education services.
- (d) As a condition for receiving Essential Early Education grant funds, a school district shall make reasonable efforts to coordinate services with local public and private agencies that provide services to children of three through five years of age.

2366.9 Residential Placements.

2366.9.1 State-Operated Residential Schools and Day Programs. Funding for state-operated residential schools and day programs shall be in accordance with 16 V.S.A. §2948(f).

2366.9.2 Individual Residential Placements.

Funding of individual residential placements shall be in accordance with 16 V.S.A. Chapter 101, subchapter 2 and 16 V.S.A. §2958(c)(2). Applications for funding of individual residential placements will be made to the Department of Education through the Residential Review

process (Rule 2366.9.2.1).

2366.9.2.1 Residential Placement Review Team.

As needed, the Commissioner may establish a residential placement review team from within and outside the department. All members of the team are subject to the confidentiality provisions of state and federal laws. The purpose of the team is to make every effort to assist school districts and parents in understanding the range of educational options available for a particular child as early as possible in the planning process and to ensure that eligible students are educated in the least restrictive environment consistent with their individual needs. The team shall be composed of at least two members: (1) one who has knowledge about the child's area of disability and (2) the other who has knowledge of available resources and services in the school district's region of the state.

2366.9.2.2 Notification of the Commissioner.

Each responsible agency, at the time it is considering or reconsidering the placement of a student with disabilities, shall notify the Commissioner, in writing, with a copy sent to the student's parents, that residential placement is a possible option for inclusion in the student's IEP. A continuum of placements must be considered for each student. This consideration alone is not sufficient to give rise to the need for such notice. Notice shall occur as a result of the following:

- (1) recommendation by the Evaluation and Planning Team for residential placement;
- (2) unilateral residential placement by the parents or by another state agency, pursuant to 16 V.S.A. § 2942(7);
- (3) recommendation by another state agency for residential placement; or
- (4) annual review for a student already in residential placement; or
- (5) whenever circumstances warrant a belief by the school

district that residential placement is a possible option for inclusion in a student's IEP.

Nothing herein shall be construed to mean that a student who falls within one of the above five categories necessarily requires residential placement. Additionally, nothing herein shall be construed to mean that notice to the Commissioner represents a decision of the IEP participants. Moreover, nothing herein shall be construed to interfere with the availability of regular departmental consultation.

2366.9.2.3 Timelines.

Each responsible agency shall notify the Commissioner of its belief that residential placement is a possible option as soon as possible so that the involvement of the review team, if deemed necessary by the Commissioner, does not interfere with the timelines for the placement decision.

2366.9.2.4 Receipt of IEP.

After the IEP participants have made a determination that a student requires residential placement, the responsible agency shall forward the following documents to the Commissioner within 5 working days of the IEP's completion:

- (1) the student's most recent Evaluation Plan and Report, any Supplemental Evaluation Plan and Report(s)
- (2) current IEP, residential placement application form,
- (3) the LRE checklist;
- (4) and any other relevant information.

2366.9.2.5 Residential Review Team Procedures

- (1) Upon receiving notice under Rule 2366.9.2.2 or the IEP under Rule 2366.9.2.4, or upon request by a parent to establish a residential placement review team to review their child's case, the Commissioner may establish a review team. Within 10 working days of receipt of the

notice, the IEP or the parental request, the Commissioner or his designee shall notify the responsible agency and the parents whether or not a review team has been constituted or reconvened.

- (2) These rules shall not apply to placements made prior, January 15, 1990, except at the annual review of those placements.
- (3) The review team, or any designated member thereof may investigate the need for residential placement of a student and provide technical assistance to the responsible agency concerning the need for residential placement, alternatives to residential placement, and alternative cost effective residential facilities.
- (4) Within 30 calendar days of its establishment, the team shall take any of the following actions, as deemed appropriate by the team:
 - (a) advise the school district and parents on alternatives to placement;
 - (b) review the individualized education program calling for residential placement of a student to consider whether the student can be educated in a less restrictive environment;
 - (c) assist the school district in locating cost effective and appropriate residential facilities where necessary;
 - (d) request, but not require, a new individualized education program when it believes that appropriate alternatives to residential placement are available; or
 - (e) offer mediation as a means of resolving disputes relating to the need for residential placement, or the particular residential facility recommended for a student with a disability or the associated costs.
- (5) The Commissioner may waive any provision of Rule

2366.9.2.5, not otherwise inconsistent with law for emergency placements or administrative efficiency.

- (6) Where the team or its designee finds that the placement practices or policies of a responsible agency are substantially inconsistent with least restrictive environment provisions of state or federal law, it may require the agency to submit a plan of correction.
- (7) Where the team or its designee recommends and the Commissioner finds that a residential placement has been effectuated which is substantially more costly than available, appropriate, alternative residential facilities, reimbursement may be withheld from the responsible agency under subchapter 2 of Chapter 101 of Title 16 of Vermont Statutes Annotated in an amount not to exceed the difference between the cost of the two facilities. In such an instance, the responsible agency may appeal the decision of the Commissioner to the State Board of Education in accordance with Rule 1230.

2366.9.2.6 Due Process Hearing.

- (1) Where the review team recommends that a student does not require residential placement, the Commissioner may initiate a special education due process hearing under Rule 2364.3.5. to:
 - (a) obtain an order placing the student in a less restrictive environment; or
 - (b) obtain an order that the Department is not obligated to bear the costs of that placement in instances when it would not be in the best interests of the student to remove him or her from the residential placement during the present school year,
- (2) If the Commissioner does not prevail, the decision of the hearing officer shall be final and the hearing officer shall award both the responsible agency and the

parents' reasonable costs and attorneys' fees for defense of the action. In all instances, mediation will be offered prior to the Commissioner's filing of a due process complaint.

2367 Students in Independent Schools or Programs of Home Study.

Students who have been determined by the responsible agency to be eligible to receive special education and related services and who are enrolled in a recognized or approved independent elementary or secondary school or who are enrolled with the State Department of Education in a program of home schooling, pursuant to 16 V.S.A. §166b, shall be able to participate in programs assisted or carried out under IDEA, thereby providing these students special education services consistent with the priorities specified in the Act and regulations. The responsible agency shall ensure that these special education and related services are planned utilizing the IEP process. Such services shall be provided at a location determined by the responsible agency and shall provide students enrolled in independent schools or home study programs with a genuine opportunity for equitable participation in accordance with such provisions in the responsible agency's local education plan.

2367.1 School Districts Without a Public School.

A school district which does not maintain a public school managed by a school board or which has not designated, in accordance with 16 V.S.A. §827, an approved private school or a public school not managed by a school board at the grade level needed by a resident student eligible for special education, shall offer the student a free appropriate public education. All special education evaluations, planning and due process procedures, as required by these rules (Rule 2360, et seq.) and by federal law, shall be made available to students who are referred for a special education evaluation or who are eligible for special education and to their parents. The location for IEP services shall be determined in the following manner:

- (1) the choice of a specific school(s) appropriate to fulfill the IEP, including the requirements to educate the student in the least restrictive environment, shall be determined by a student's IEP participants, after the IEP is developed. If the IEP participants do not reach consensus about the location of services, the LEA representative shall determine the choice of specific schools. This

shall be communicated to the parents within 5 working days of this determination.

- (2) if the parents choose to have their child served, pursuant to his or her IEP, at a school other than that selected by the IEP participants or by the LEA representative:
 - (a) the district shall fund the actual educational costs associated with the parents' placement to the amount that would have been spent on the school(s) chosen by the IEP participants so long as:
 - (i) the school chosen by the parents is approved for special education purposes (Rule 2228, et seq.); and
 - (ii) the IEP participants agree that the IEP can be adequately implemented at that school.
 - (b) the district shall not pay more than is required by 16 V.S.A. §§823 and 824 if the parents choose to send their child to an approved school (Rule 2200) that is not approved for special education purposes (Rule 2228) or if the IEP participants conclude that the IEP cannot be adequately implemented at the special education approved school chosen by the parents.
 - (i) When the parents choose to refuse the offered free, appropriate, public education by choosing a school other than that approved by the other IEP participants and the district pays only the costs required by 16 V.S.A. §§823 or 824, the district shall offer the student special education services pursuant to Rule 2367.

2368 Placement of students in Independent Schools.

When a student with a disability is placed in or referred to an independent school or facility by a responsible agency for the purpose of providing the student with special education and related services, services shall be provided: (1) in conformance with an Individualized Education Program, (2) at no cost to parents, and (3) in conformance with federal and state standards.

2369 Educational Surrogate Parents.

To insure that the rights of a student are protected whenever the parents of a student are not known, are unavailable, or the student is a ward of the State, the Commissioner or a designee shall assign an individual to act as an educational surrogate parent. The educational surrogate parent shall have the same rights and responsibilities as natural parents under these rules. The responsible agency may recommend an educational surrogate parent, but the official appointment shall be made by the Commissioner or a designee. Before making the appointment, the Commissioner or a designee shall assure that the person appointed as an educational surrogate parent:

- (1) has no vested interest that conflicts with the interests of the student being represented; and
- (2) has knowledge and skills that insure adequate representation of the student.

BEGINNING OF THE SECTION OF OTHER PERTINENT REGULATIONS
FROM THE
VERMONT STATE BOARD OF EDUCATION MANUAL OF RULES AND PRACTICES

1251 Reasonable Accommodations

When a student with disabilities is not eligible for special education, but is determined to have a disability, accommodations shall be made as needed in such areas as evaluation procedures, curriculum material or programmatic adaptations, including behavior management interventions, and supplemental aids and services. Other regulations contained in Section 2360 et seq. shall not apply to these students. See Rule 2362.2.7.

1252 Instruction for Homebound and Hospitalized Students.

- (1) Pupils are eligible for instruction at home or in the hospital whenever they are unable to attend school for a period of ten consecutive school days or more because of pregnancy or a medical disability.
- (2) Homebound or hospitalized elementary pupils shall receive instruction for no less than an average of six hours per week unless

inconsistent with educational and/or medical recommendations. Homebound or hospitalized secondary pupils shall receive instruction for no less than an average of two hours per subject per week unless inconsistent with educational and/or medical recommendations. Instructional materials shall be provided by the district of attendance.

1253 Hearings Under Section 504

Conflicts and alleged violations under section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794 may be resolved through due process hearings in the same manner as for a special education due process hearing under Rule 2364.3.5. All the procedures for such a due process hearing according to Rule 2364.3.5, including the time limits of 16V.S.A. §2958, apply to Section 504 hearings. The hearing officer may award declaratory and injunctive relief but not damages, costs or attorney's fees. In addition, to or in lieu of a due process hearing, a person may file a complaint with the Office of Civil Rights in Boston, MA.

2150.4 Multi-year Plans

A Multi-year Plan is an individual plan for students with limiting handicaps that leads to completion of the graduation requirements. This plan shall include a component explaining any exception to the graduation requirements and alternative requirements designed for the pupil.

The process is as follows:

- (1) A request for Multi-year Plans may be made by students, parents, teachers, and guidance personnel, or school administrators.
- (2) For students who are eligible for special education (see 2360) a Multi-year Plan shall be considered at a student's Individual Education Plan (IEP) meeting (see 2364.2) beginning with the IEP meeting to plan services for the year in which the student turns 14 years old. The participants at the IEP meeting shall develop a Multi-year Plan if they determine that it is necessary in order for the student to graduate. The student's superintendent or his or her designee shall review and approve or disapprove all Multi-year Plans. Any changes to a Multi-year Plan shall be submitted by the IEP participants.

- (3) The superintendent or his or her designee shall be responsible for developing the Multi-year Plan and shall determine the extent to which accommodations are made in graduation requirements.
- (4) When approved, completion of the Multi-year Plan shall be stated as one of the goals in the student's IEP.
- (5) Upon the successful completion of an approved Multi-year Plan for graduation, a diploma shall be awarded to the student.

2194 Educational Support System.

- (1) It is the policy of the State that each local school district develop and maintain, in consultation with parents, a comprehensive system of education that will result, to the extent appropriate, in all students succeeding in the general education environment. Each public school board in Vermont shall adopt a policy that establishes an educational support system.
- (2) Each public school shall develop written procedures to establish and implement the educational support system. The procedures shall describe:
 - (a) the composition and function of the educational support team; and
 - (b) a process for timely referral for evaluation for special education eligibility, when warranted. The educational support system shall not be a substitute for the special education process and shall not interfere with a student's right to a timely referral for an evaluation for special education eligibility at any time prior to or during the conduct of educational support activities.
- (3) On an annual basis, the school district shall provide to all parents of students enrolled in the district's schools, information regarding the existence, purpose and function of the educational support system including the educational support team.

2194.1 Within each school district's comprehensive system of educational services, each public school shall develop and maintain an educational support system for children who require additional assistance in order to succeed in the general education environment.

2194.2 The educational support system shall, at a minimum, include an educational support team and a range of support and remedial services, including instructional and behavioral interventions and accommodations.

- (a) The educational support system shall:
- (1) Be integrated to the extent appropriate with the general education curriculum.
 - (2) Be designed to increase the ability of the general education system to meet the needs of all students. To accomplish this, the school district shall provide training to school district personnel, as needed, in such areas as instructional and behavioral interventions, accommodations and instructional resources.
 - (3) Be designed to provide students the support needed regardless of eligibility for categorical programs.
 - (4) Provide clear procedures and methods for handling a student who disrupts a class and shall include provision of educational options, support services and consultation or training for staff where appropriate. Procedures may include provision for removal of the student from the classroom for as long as appropriate, consistent with state and federal law.
 - (5) Ensure collaboration with families, community supports and the system of health and human services.

School districts are encouraged:

- a) to maintain effective communication with the parents of students who receive assistance through an educational support team; and
- b) to inform parents when a significant change is made in their child's educational program as a result of a recommendation from an educational

support team.

- (b) Each educational support system shall include an educational support team which shall:
 - (1) Insure a timely referral for evaluation for special education eligibility or a 504 determination, when warranted.
 - (2) Be composed of staff from a variety of teaching and support services positions.
 - (3) Screen referrals to determine what classroom accommodations and remedial services have been tried.
 - (4) Assist teachers in planning and providing services and accommodations to students in need of classroom supports.
 - (5) Maintain a written record of its actions. Written records of the educational support team will be subject to Rule 2193, applicable state and federal laws including the Federal Family Educational Rights and Privacy Act of 1974 (FERPA) (P.L. 95-380), as amended, and its implementing regulations contained at 34 C.F.R. part 99.
- (c) No individual entitlement or private right of action is created by this section.

2195 Grant Applications for Inservice Training Funds.

- (1) On April 15th of each fiscal year through fiscal year 1995, the Commissioner shall solicit applications for in-service training funds for the training of teachers and administrators in the identification and evaluation, and provision of educational services to students who require classroom supports.
- (2) Applications must be filed by May 15th on a form prescribed by the Commissioner.

- (3) In distributing these in-service training funds, preference will be given to those districts which demonstrate the greatest need. The following factors may be considered in determining greatest need:
- (a) the percentage of students in special education;
 - (b) the percentage of students receiving special education outside of the regular classroom environment;
 - (c) the degree of the school restructuring activities being proposed;
 - (d) the extent to which the proposed training will result in lasting change to the school system;
 - (e) the unique training requirements based on staff turnover, staff shortages or the training needs of the staff; and
 - (f) a high student to staff ratio.

2224.2 Tuition for Independent Schools.

Tuition may not be paid from public funds to any independent elementary or secondary school in Vermont for any Vermont student who has been determined eligible for special education unless:

- (a) the State Board of Education approval of the school for special education purposes is obtained pursuant to Rule 2228 et seq.; or
- (b) there is an order from a court or from a due process hearing pursuant to Rule 2364.3.5 requiring such payment.

2228 Special Education Approval of Independent Schools.

- 2228.1 (1) In order for an in-state independent school to receive approval for purposes of Rules 2224.2 and 2228.2 and 16 V.S.A. 2958(e), it must obtain general independent school approval pursuant to Rule 2200, and also receive approval for special education purposes from the State Board of Education that its staff, programs and facilities meet state and federal special education standards.
- (2) Limitation of Special Education Approval.

Each special education approval may be limited to one or more categories of disability, as defined in Rule 2362.1, according to the services the school provides.

(3) Out-of-state Programs.

Unless otherwise determined by the Vermont State Board of Education, in order for an out-of-state independent school to be approved for special education purposes by the Vermont State Board of Education, it must be approved by the host state for the purpose of providing special education and related services to children with disabilities within that state. Any limitation by the host state on an independent school's special education approval, such as by category of disability served, or other comparable standard, shall also apply to the school's special education approval in Vermont.

2228.2 (1) Placement Prohibition.

No responsible agency, as defined by Rule 2360.2, shall make a special education placement in an independent school that has not been approved for special education purposes unless the placement is pursuant to:

- (a) subsection (2) of this rule,
- (b) a court order, or
- (c) a due process order pursuant to Rule 2364.3.5.

Nor shall such a placement be made in an independent school that serves special education students who are in a category of disability different from that under which the student was determined to be eligible for special education.

(2) Exceptional Circumstances - Approval Process.

Upon application by a responsible agency, the Commissioner may permit, in exceptional circumstances, a special education placement in an independent school that is approved pursuant to Rule 2200, but has not received approval for special education purposes pursuant to Rule 2228.1. Rule 2366.2.2(7) notwithstanding, in instances in which the

Commissioner grants such approval, tuition and associated otherwise allowable costs shall be reimbursable under subchapter 2 of Chapter 101 of Title 16 of the Vermont Statutes Annotated. Any person aggrieved by the Commissioner's decision may file an appeal with the State Board of Education pursuant to 16 V.S.A. §828.

- (a) Exceptional circumstances exist when:
 - (i) after reasonable efforts, the LEA cannot locate an appropriate public or independent school approved for special education purposes pursuant to Rule 2228.1 to serve students with the category of disability under which the student was determined to be eligible for special education; and
 - (ii) the proposed placement is deemed appropriate by the student's IEP participants.
- (b) The Commissioner may specify conditions under which the placement is to be carried out.

2228.3 In order to obtain special education approval, an independent school shall meet standards that apply to state and local education agencies. This shall be evidenced by the maintenance and implementation of written policies or procedures, as appropriate, in at least the following areas:

- (1) admissions;
- (2) least restrictive environment;
- (3) discipline;
- (4) graduation;
- (5) faculty qualifications; and
- (6) faculty-student ratios, including ratios that meet the State Board of Education public school approval standards, Rule 2160.18, for the direct provision of special education and related services or consultation regarding the provision of

special education and related services to publicly-placed students on IEPs;

2228.3.1 In order to obtain special education approval, an independent school shall coordinate with sending responsible agencies, parents, public agencies and other service providers serving a student by:

- (1) maintaining educational records and disclosing them to the sending responsible agency and the student's parents;
- (2) participating in evaluation procedures and in the development of IEPs, including plans for reintegration and transition services;
- (3) implementing IEPs; and
- (4) providing prior notice to the sending LEA regarding the need for a change in a student's program or placement, including long-term suspension or expulsion.

These practices shall be evidenced by the maintenance and implementation of written policies or procedures, as appropriate.

2228.3.2 An independent school shall satisfy the state licensure requirements for personnel who are responsible for the provision or supervision of special education and related services.

2228.4 Written Agreements Required.

2228.4.1 Agreement as to Costs.

In order to obtain special education approval, an independent school shall assure the State Board of Education that prior to enrolling a publicly-placed student who is served pursuant to an IEP, it will enter into a written agreement with the sending responsible agency that outlines tuition, room, board and other costs associated with the student's attendance. For students on an IEP who are placed by a state agency or a designated

community mental health agency, or any other agency defined by the Commissioner, in accordance with 16 VSA §2948, the agreement shall be with the Commissioner of Education. In the instance of an emergency placement, such provisions may be agreed upon within thirty days of the student's enrollment.

2228.4.2 Agreement as to Non-Instructional Services.

In order to obtain special education approval, an independent school shall assure the State Board of Education that within thirty days of enrolling a publicly-placed student who is served pursuant to an IEP, it will enter into written agreement with the sending responsible agency as to the division of responsibility for performance of non-instructional services, including compliance with special education procedural requirements. For students placed by a state agency or a designated community mental health agency, or another agency defined by the Commissioner, this agreement shall be with the local educational agency that has educational planning responsibility for the student.

2228.5 Special Education Approval Procedures.

- (1) Application for special education approval shall be made at the time of application under Rule 2200. An independent school that has already obtained independent school approval from the State Board of Education, may at any time submit an application for special education approval to the Commissioner.
- (2) Application for special education approval shall be submitted in writing to the Commissioner in accordance with the format prescribed by the Commissioner.
- (3) The procedures for special education approval shall be the same as those for approval in accordance with Rules 2222.1 through 2222.7. To the extent possible, these procedures shall occur simultaneously.

2228.6 After receiving approval for special education purposes, an independent school shall notify the Commissioner of any significant changes to its special education program, professional staff,

governance, financial capacity or facilities. The Commissioner may, upon such notification, gather additional information from the school, including by means of a site visit. As a result, the Commissioner may return to the State Board for a change in the school's approval for special education purposes. If the Commissioner petitions the State Board for a change to an independent school's approval for special education purposes, the Council of Independent Schools and the subject independent school shall be notified and have an opportunity to be heard by the State Board. If the school disagrees with the proposed change to its approval for special education purposes, the Board shall hear the matter in accordance with the requirements of Rule 1230, et seq.

2228.7 Independent schools that are approved for special education purposes shall be deemed to offer a minimum standard of service to a student, as required by 16 VSA 2973, if those services are offered according to a written agreement with the sending responsible agency, as required by Rule 2228.4.

2228.8 Rate Approval for Independent Schools Approved for Special Education Purposes.

(1) Each independent school approved for special education purposes by the State Board of Education shall annually report its rates for special education tuition, related services and room and board to the Commissioner on a form prescribed for that purpose.

(2) The rates that an independent facility approved for special education purposes charges for tuition, related services and room and board shall be no more than the costs that are reasonably related to the level of services provided to its publicly-placed special education students. Reasonable relationship shall be determined by utilizing generally accepted accounting principles, such as those set forth in the Handbook (II) for Financial Accounting of Vermont School Systems.

(3) The Commissioner shall review each special education approved independent school's annual rate report. If the Commissioner concludes that a special education approved independent school's rates are not reasonably related to the

level of services provided to publicly-placed special education students, the Commissioner shall make a determination as to the maximum rate that public schools and the State Department of Education would pay to the independent school for those services and offer the school an opportunity for explanation regarding why the maximum rate the Department would pay is not adequate. If the explanation is not satisfactory to the Commissioner, he or she shall notify the Council for Independent Schools and shall refer the matter to the State Board of Education.

- (a) Upon such referral by the Commissioner, the Board shall conduct a formal proceeding in accordance with the requirements of Rule 1230, et seq.
 - (b) The State Board's determination shall be final.
- (4) If an independent school submits a request for rate approval for the ensuing school year with complete supporting documentation prior to December 15, the Commissioner shall notify the independent school of the results of his or her review on or before February 1 of the next calendar year.

2229 Corrections Education Program

To the extent applicable, the Commissioner shall conduct his or her review of the Corrections Education Program in accordance with the procedures and standards contained within Rules 2220 through 2228.8, as if it were an independent school.

Due to an inadvertent error on our part, the tutorial regulations that went through the Administrative Procedures Act review and adoption process used a section number (2229) that was already in use for the above regulation concerning Department of Corrections Education Program. This error has been remedied by assigning the 2230 series to the regulations which concern tutorial programs. We apologize in advance for any confusion this error may cause.

2230 Approval of Tutorial Programs: Statutory authority 16 V.S.A. §828.

2230.1 Definition: "Tutorial program" means education provided to a pupil who is placed in a short term program that is not administered by a

school district. The purpose of the program is to provide evaluation and/or treatment. This does not include home based tutorials, programs operated by a public school or collaborative, or a program of an independent school that has been approved under 16V.S.A.§166. The average length of stay for students in a tutorial program shall be not more than six months. The Commissioner may waive the average length of stay time period for individual programs, based upon needs of the students served by the program

2230.2 Procedures for Approval:

2230.2.1 Application shall include the following:

- (1) Name, address, telephone number of the tutorial program,
- (2) Name of the Chief Executive Officer or contact person,
- (3) A statement of the tutorial program's purpose and objectives,
- (4) A description of the tutorial program enrollment including a statement of who it is designed to serve,
- (5) A description of the plan of organization for the tutorial program and
- (6) A tutorial program calendar.

2230.2.2 Review: Upon receipt of an application for approval, the Commissioner shall appoint a committee of at least two persons to review the application and visit the tutorial program.

2230.2.3 Report to the Commissioner: The appointed committee shall present a written recommendation regarding possible approval to the Commissioner. A copy of the recommendation shall be sent to the tutorial program. The applicant shall be given at least 30 days to respond before a recommendation regarding approval or disapproval is made by the Commissioner to the State Board of Education.

2230.2.4 Board Action: The Commissioner shall recommend approval or disapproval for action by the State Board at their next meeting. Officials of the tutorial program shall be notified of this meeting date.

2230.2.5 Term of Approval: The State Board may grant approval for a

term of not more than two years. The tutorial program must be approved prior to receiving tuition payments from a public school district.

- 2230.2.6 Renewal: Not less than three months prior to expiration of a tutorial program's approval, the Commissioner shall send an application packet and a letter notifying the program when the site visit will occur. The completed application must be received from the tutorial program not later than 30 days prior to the scheduled site visit.
- 2230.2.7 Denial, Revocation or Suspension of Approval: Prior to recommending denial, revocation or suspension of approval to the State Board of Education, the Commissioner shall notify the tutorial program of the reasons for the proposed action and shall afford the tutorial program an opportunity to be heard by the Board. Approval of a tutorial program shall be revoked or suspended by the Board based on a finding that the tutorial program no longer meets the criteria for approval.
- 2230.3 Criteria for Approval: In order for a tutorial program to obtain approval from the State Board of Education, the program shall meet both the general and special education requirements in the following areas:
 - 2230.3.1 The instruction and methods of instruction offered are age and ability appropriate for the student, and are coordinated with the student's responsible school district as set forth in §2230.3.10, below.
 - 2230.3.2 The tutorial program has sufficient facilities and materials or access to other facilities and additional materials as necessary to provide an appropriate education.
 - 2230.3.3 The tutorial program's facilities and operation comply with local, state and federal requirements pertaining to the health and safety of students.
 - 2230.3.4 The tutorial program employs an adequate number of professional staff for the population served and these staff members are qualified by training and experience in the areas in which they are assigned.

- 2230.3.5 Teachers providing or supervising the provision of special education have licensure and endorsement as would be required for the equivalent work in a Vermont public school.
- 2230.3.6 All professional staff have relevant experience and/or training in the duties to which they are assigned.
- 2230.3.7 The tutorial program maintains a register of the daily attendance of each of its pupils and reports the attendance to the responsible school district.
- 2230.3.8 The tutorial program maintains an operating schedule that includes instruction for no less than 10 hours per week unless inconsistent with medical and/or educational recommendations. The operating schedule must be sufficient to ensure that the instructional services address the individual needs of a student with disabilities and are consistent with the student's IEP.
- 2230.3.9 The tutorial program has the financial capacity to carry out its educational purposes for the period of approval.
- 2230.3.10 The tutorial program coordinates educational services with the responsible school district, including credit for coursework for high school and coordinates with other responsible agencies such as Social and Rehabilitative Services, Community Mental Health Centers, and Family- Parent Child Centers by:
 - 2230.3.10.1 Contacting the responsible school district(s) (see 16 V.S.A. §1075) in order to access school records and determine the special education status of the student:
 - 2230.3.10.2 Reviewing the IEP, the student's needs and its own ability to implement the IEP;
 - 2230.3.10.3 Making a formal referral for a special education evaluation to the responsible school district, if when receiving a student, he/she is suspected of having a disability;
 - 2230.3.10.4 Maintaining educational records and disclosing them to the responsible school district and the student's

parents, unless restricted by statute, court order or other legally binding document specifically revoking those rights;

2230.3.10.5 Participating in evaluation procedures and in the development of IEPs, including plans for reintegration and transition services;

2230.3.10.6 Implementing IEPs; and

2230.3.10.7 Providing prior notice to the responsible school district regarding the need for a change in a student's program or placement, including long-term suspension or expulsion.

2230.3.11 In order to obtain approval, a tutorial program shall meet special education standards that apply to state and local education agencies. This shall be evidenced by the maintenance and implementation of written policies or procedures, as appropriate, in at least the following areas:

- (1) Admissions,
- (2) Discipline and
- (3) Significant change in placement.

2230.4 Rate Approval for Tutorial Programs.

2230.4.1 Each tutorial program shall annually report its rates for tuition, related services and room and board, if applicable, to the Commissioner on a form prescribed for that purpose.

2230.4.2 The rates that a tutorial program charges for tuition, related services and room and board shall be reasonably related to the actual costs of the services provided. Reasonable relationship shall be determined by utilizing generally accepted accounting principles, such as those set forth in the, "Handbook (II) for Financial Accounting of Vermont School Systems."

2230.4.3 The Commissioner shall review each tutorial program's annual rate report. If the Commissioner concludes that a tutorial

program's rates are not reasonably related to the services provided, the Commissioner shall make a determination as to the maximum rate that public schools and the State Department of Education would pay to the tutorial program for those services and offer the tutorial program an opportunity for explanation regarding why the maximum rate the Department would pay is not adequate. If the explanation is not satisfactory, the Commissioner shall refer the matter to the State Board of Education.

- 2230.4.3.1 Upon such referral by the Commissioner, the State Board of Education shall conduct a formal proceeding in accordance with the requirements of Rule 1230, et seq.
- 2230.4.3.2 The State Board of Education's determination shall be final.

4311 Procedures.

When a student is subject to disciplinary action, the school district shall afford the student due process procedures as follows:

- 4311.1 In all cases of short term suspension from school, which is generally regarded as 10 days or less, the student and his or her parent/guardian shall be given an opportunity for an informal hearing before an appropriately designated school official. Except for cases set forth in paragraph 4311.3, the hearing must precede the suspension and the district shall provide:
 - (1) notice of the charges;
 - (2) explanation of the evidence against the student;
 - (3) opportunity for the student to tell his or her side of the story;
 - (4) decision in writing to the parent/guardian.
- 4311.2 In cases of a long term suspension which is generally more than 10 days unless a school district establishes a shorter

period, or an expulsion, the student and his or her parent/guardian shall be given an opportunity for a formal hearing before the school board and the district shall provide:

- (1) written notice of the following:
 - (a) nature of charges against the student;
 - (b) date, time and place of hearing;
 - (c) right to legal representation;
 - (d) possible penalties involved;
- (2) opportunity to present evidence;
- (3) opportunity to cross-examine witnesses;
- (4) decision in writing to parent/guardian.

4311.3 (1) When a student, because of his or her conduct or condition, is an immediate threat to himself or herself, others, property or educational environment, the school district may take whatever action is appropriate under the circumstances, including, but not limited to, immediate suspension pending a hearing as soon as possible thereafter. In addition, in cases where a student brings a weapon (as defined in the federal Gun-Free School Act) to school, the school district must refer the student to a law enforcement agency and expel the student for a period of not less than one calendar year unless such expulsion is modified in accordance with the provisions of 16 V.S.A. §1166(b)(2) in circumstances such as but not limited to:

- (a) the student is unaware that he or she has brought a weapon to school,
- (b) the student did not intend to use the weapon to threaten or endanger others,
- (c) the student is disabled and the misconduct is related to the disability,
- (d) the student does not present an ongoing threat to others and a lengthy expulsion would not serve the best interest of the student.

- (2) In situations where a student with a disability brings a weapon to school, the provisions of regulation 4312(2) shall apply. In any such situation, an opportunity for a hearing prior to an expulsion must be provided prior to the expulsion, pursuant to 16 V.S.A. §1166(b)(2).

4312 Long-term Suspension or Expulsion of Students With a Disability or Students Who Are Handicapped According to §504 of the Rehabilitation Act.

- (1) Definitions.

For purposes of this rule the following definitions apply:

- (a) "Student" means an individual who has attained the age of five years on or before January 1 next following the beginning of the school year and who is enrolled in kindergarten or public elementary or secondary school.
- (b) "Suspension" means both out-of-school and in-school suspension, as defined by local policy in accordance with 16 V.S.A. §1161(a).

- (2) Major Discipline for Students Receiving Special Education Services.

- (a) A student who is eligible for special education services pursuant to Rule 2362.1 shall not be expelled or suspended for more than 10 consecutive days in a school year unless the following procedures have been completed:
 - (i) a determination by the IEP participants pursuant to rule 2364.2.1, that the misconduct at issue is not a manifestation of his or her disability (See paragraphs 4 and 5, below, for procedures);
 - (ii) a Supplemental Evaluation, as defined in Rule 2362.2.8(2); and
 - (iii) an interim IEP has been written for the period of suspension.
- (b) A student who is eligible for special education services pursuant to Rule 2362.1 shall not be suspended for more than 10 cumulative days in a school year without the procedures set forth above in (2)(a)(i - iii) of this rule unless the IEP participants document

justification as to why the cumulative days of suspension do not constitute a significant change of placement.

- (c) In addition to and consistent with the above provisions, if the expulsion proceedings involve a student with a disability who is determined to have brought a weapon (as defined by the federal Gun-Free School Act) to school, then the student may be placed in an interim alternative educational setting for not more than 45 calendar days. The 45 calendar days shall not include the number of days for which the student was suspended under §4311.1 or 4312(2)(b).
 - (i) The interim alternative educational setting described above shall be decided at the IEP meeting or meeting of the Section 504 team.
 - (ii) If a parent or guardian of a student described in clause (c) requests a due process hearing, then the student shall remain in the alternative educational setting as per clause (c)(i) during the pendency of any proceedings pursuant to this section, unless the parents and the local education agency agree otherwise.
 - (iii) The provisions of this section shall be construed in a manner consistent with the requirements of the Gun-Free School Act of 1994 and any amendments to the Individuals with Disabilities Education Act relating thereto.

(3) Major Discipline for §504 Students.

- (a) A student who is not eligible for special education but who is a qualified handicapped person, as defined by Section 504 of the Rehabilitation Act of 1973, 29 USC Section 794 and 34 C.F.R. 104 et seq., (hereinafter §504 and §504 student) shall not be expelled, or suspended for more than 10 consecutive days in a school year unless the following procedures have been completed:
 - (i) an evaluation, as defined by 34 CFR 104.35; and
 - (ii) a determination by the student's §504 Evaluation and Placement Team (hereinafter §504 Team) that the conduct is not a manifestation of his or her handicapping condition (See paragraphs 4 and 5, below, for procedures).

- (b) A §504 student shall not be suspended for more than 10 cumulative days in a school year without the procedures set forth above in (2)(a)(i - ii) unless the student's §504 Team documents justification as to why the cumulative days of suspension do not constitute a significant change of placement.
- (c) The provisions of rule 4312(2)(c)(above) apply equally to a student who has a disability pursuant to Section 504 of the Rehabilitation Act of 1973.

(4) A Significant Change of Placement Pending Evaluation Completion.

A significant change of placement for a student receiving special education services or for a §504 student shall not be made pending completion of a Supplemental Evaluation or a §504 Evaluation and the manifestation determination by the student's IEP participants or §504 Team unless:

- (a) a Supplemental Evaluation done for purposes of the interim period and interim IEP or interim §504 plan serve as the basis for the significant change of placement; or
- (b) the school obtains a court injunction upon a showing that maintaining the student in his or her current placement is substantially likely to result in injury either to himself or herself, or to others.

(5) Determination of Relationship Between Misbehavior and Disability.

In instances in which the IEP participants or the §504 Team determines that there is a relationship between the student's misconduct and his or her disability or handicapping condition:

- (a) a change in program or placement may be addressed by the special education student's IEP participants or by the §504 student's §504 Team; and
- (b) the student's IEP participants or the §504 Team can respond to the misconduct by designing or enforcing a plan of behavior management.

(6) Determination of No Relationship Between Misbehavior and Disability.

In instances in which it is determined that there is no relationship between

the misconduct and the student's disability or handicap:

- (a) a student receiving special education services may be appropriately suspended or expelled, but, during the period of discipline the responsible agency shall continue to provide the student with a free and appropriate public education, as determined by the student's IEP participants; or
- (b) a §504 student may be disciplined and during the period of discipline the responsible agency is under no obligation to provide the student with educational services.

(7) Misbehavior is the Use or Possession of Illegal Drugs or Alcohol.

This Rule (4312), shall not apply when a responsible agency takes disciplinary action against a §504 student, who is not eligible for special education, if:

- (a) the misconduct for which the student is being disciplined pertains to the use or possession of illegal drugs or alcohol at school; and
- (b) the student is currently engaging in the use of alcohol or illegal drugs.

In this instance, the student determined to be handicapped pursuant to §504 shall be disciplined in accordance with Rule 4311.

(8) Student With Suspected Disabilities.

If, at the time of imposition of major discipline, a student is suspected of being in need of special education or of being handicapped under Section 504, an appropriate evaluation shall be planned and completed prior to discipline being imposed. If the results of the evaluation indicate eligibility for special education or that the student is a qualified handicapped individual under Section 504, then the procedures outlined in this rule (4312) shall be followed. If the student is determined to be ineligible for special education and not to be a qualified handicapped individual under Section 504, then the discipline procedures of Rule 4311 shall be followed.

(9) Regular Due Process For Student Discipline.

The disciplinary procedures set forth in Rules 4311 shall also be afforded to

both special education students and §504 students.

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