Parents' Rights in Special Education Procedural Safeguards Notice

Effective: August 2009
Revised: November 2009

The Individuals with Disabilities Education Act (IDEA), the Federal law concerning the education of students with disabilities, requires schools to provide parents of a child with a disability with a notice containing a full explanation of the procedural safeguards available under the IDEA and Vermont Department of Education Special Education regulations (All references to Rules can be found in The Vermont State Board of Education Manual of Rules and Practices; a reference to 34 CFR can be found in the Federal Register).

A copy of this notice must be given to parents or adult students only one time a school year, except that a copy must be given to the parents or adult student upon:

1. Initial referral for an evaluation;

2. Receipt of the first administrative complaint under Rule 2365.1.5 or a due process complaint under Rule 2365.1.6 in that school year;

3. Request by a parent or adult student; and

4. In accordance with the discipline procedures in Rule 4313.1(h).

VERMONT
DEPARTMENT OF EDUCATION

Student Support Division
(802) 828-5114

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Prior Written Notice

Rule 2365.1.1

Notice

Your school district or supervisory union must give you written notice (provide you certain information in writing), whenever it:

- Proposes to begin or to change:
  - the identification,
  - evaluation,
  - educational placement of your child, or
  - the provision of a free appropriate public education (FAPE) to your child; or
- Refuses to begin or to change the identification, evaluation, or educational placement of your child or the provision of FAPE to your child.

Content of notice

The written notice must:

- Describe the action that your school district or supervisory union proposes or refuses to take;
- Explain why your school district or supervisory union is proposing or refusing to take the action;
- Describe each evaluation procedure, assessment, record, or report your school district or supervisory union used in deciding to propose or refuse the action;
- Include a statement that you have protections under the procedural safeguards provisions in IDEA and Vermont Special Education Rules;
- Tell you how you can obtain a description of the procedural safeguards if the action that your school district or supervisory union is proposing or refusing is not an initial referral for evaluation;
- Include resources for you to contact for help in understanding IDEA and Vermont Special Education Rules;
- Describe any other choices that your child's individualized education program (IEP) Team considered and the reasons why those choices were rejected; and
- Provide a description of other reasons why your school district or supervisory union proposed or refused the action.

Notice in understandable language

The notice must be:

- Written in language understandable to the general public; and
- Provided in your native language or other mode of communication you use, unless it is clearly not feasible to do so.
    - If your native language or other mode of communication is not a written language, your school district or supervisory union must ensure that:
        - The notice is translated for you orally by other means in your native language or other mode of communication;
        - You understand the content of the notice; and
        - There is written evidence that 1 and 2 have been met.

Native Language

34 CFR §300.29

Native language, when used with an individual who has limited English proficiency, means the following:

- The language normally used by that person, or, in the case of a child, the language normally used by the child's parents;
- In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment.
- For a person with deafness or blindness, or for a person with no written language, the mode of communication is what the person normally uses (such as sign language, Braille, or oral communication).

Electronic Mail

Rule 2365.1.1(h) (4)

If your school district or supervisory union offers parents the choice of receiving documents by e-mail, you may choose to receive the following by e-mail:

- Prior written notice;
- Procedural safeguards notice; and
- Notices related to a due process complaint.

Parental Consent

Rule 2365.1.3

Consent Definition

Consent means:

- You have been fully informed in your native language or other mode of communication (such as sign language, Braille, or oral communication) of all information about the action for which you are giving consent.
- You understand and agree in writing to that action, and the consent describes that action and lists the records (if any) that will be released and to whom; and
- You understand that the consent is voluntary on your part and you may withdraw your consent at anytime.
- Your withdrawal of consent does not negate (undo) an action that has occurred after you gave your consent and before you withdrew your consent.

Consent for initial evaluation

Your school district or supervisory union cannot conduct an initial evaluation of your child to determine whether your child is eligible under IDEA and Vermont Special Education Rules without first:

- Providing you with prior written notice of the proposed action and
- Getting your consent as described under the heading Parental Consent.

Your school district or supervisory union must make reasonable efforts to obtain your informed consent for an initial evaluation to decide whether your child is a child with a disability.

Your consent for initial evaluation does not mean that you have also given your consent for your school district or supervisory union to start providing special education and related services to your child.

If your child is enrolled in public school or you are seeking to enroll your child in a public school and you have refused to provide consent or failed to respond to a request to provide consent for an initial evaluation, your school district or supervisory union may, but is not required to:

- Continue to pursue these evaluations by seeking mediation, using due process, or reviewing existing data.
- Decide not to pursue the evaluation and shall document its justification for doing so in the child's record.
    - Your school district or supervisory union will not violate its obligations to locate, identify and evaluate your child if it does not pursue an evaluation of your child in these circumstances.

Parental consent for services

Your school district or supervisory union must get or make reasonable efforts to get your informed consent before providing special education and related services to your child for the first time.

If you do not respond to a request to provide your consent for your child to receive special education and related services for the first time, or if you refuse to give such consent, your school district or supervisory union may not use mediation, due process complaint, resolution meeting, or an impartial due process hearing.

If you refuse to give your consent for your child to receive special education and related services for the first time, or if you do not respond to a request to provide such consent and your school district or supervisory union does not provide your child with the special education and related services for which it sought your consent, your school district or supervisory union:

- Is not in violation of the requirement to make a free appropriate public education (FAPE) available to your child for its failure to provide those services to your child; and
- Is not required to have an individualized education program (IEP) meeting or develop an IEP for your child for the special education and related services for which your consent was requested.

Revocation of Parental consent for services

You have the right to revoke your consent for special education services at any time before or after those services begin.

If you do so, your school district or supervisory union may not request mediation or a due process hearing.

As well, your child will not be protected in regards to discipline under special education rules.

If you revoke consent, your child may still be protected from discrimination under Section 504.

You may request that the school consider what accommodations your child may be eligible for under Section 504.

Parental consent for reevaluations

Your school district or supervisory union must get your informed consent before it reevaluates your child, unless your school district or supervisory union can demonstrate that:

- It took reasonable steps to obtain your consent for your child's reevaluation; and
- You did not respond.

If your child is enrolled in public school or you are seeking to enroll your child in a public school and you have refused to provide consent or failed to respond to a request to

provide consent for an initial evaluation, your school district or supervisory union may, but is not required to:

- Continue to pursue these evaluations by seeking mediation, using due process, or reviewing existing data.
- Decide not to pursue the evaluation and shall document its justification for doing so in the child's record.

Your school district or supervisory union will not violate its obligations to locate, identify and evaluate your child if it does not pursue an evaluation of your child in these circumstances.

Documentation of reasonable efforts to get parental consent

Your school must maintain documentation of making reasonable efforts to get your parental consent for initial evaluations, to provide special education and related services for the first time, to reevaluate and to locate parents of wards of the State for initial evaluations. The documentation must include a record of your school district or supervisory union's attempts in these areas, such as:

- Detailed records of telephone calls made or attempted and the results of those calls;
- Copies of correspondence sent to you and any responses received; and
- Detailed records of visits made to your home or place of employment and the results of those visits.

Other consent requirements

Your consent is not required before your school district or supervisory union may:

- Review existing data as part of your child's evaluation or a reevaluation; or
- Give your child a test or other evaluation that is given to all children unless, before that test or evaluation, consent is required from the parents of all children.

Your school district or supervisory union may not use your refusal to consent to one service or activity to deny you or your child any other service, benefit, or activity.

If you:

- have enrolled your child in an independent school at your own expense, or
- are home schooling your child, and
- do not provide your consent for your child's initial evaluation or your child's reevaluation, or
- do not respond to a request to provide your consent,

Your school district or supervisory union may not use mediation, due process complaint, resolution meeting, or an impartial due process hearing to force your consent and is not required to consider your child as eligible to receive equitable services (services made available to parentally-placed independent school children with disabilities.

Independent Educational Evaluations

Rule 2362.2.7

Definitions

As described below, you have the right to obtain an independent educational evaluation (IEE) of your child if you disagree with the evaluation of your child that was conducted by your school district or supervisory union.

If you request an IEE, your school district or supervisory union must provide you with information about where you may get an IEE and about your school district or supervisory union's criteria that apply to IEEs.

Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by your school district or supervisory union responsible for the education of your child.

Public expense means that your school district or supervisory union either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to you.

Parent right to evaluation at public expense

You have the right to an independent educational evaluation of your child at public expense if you disagree with an evaluation of your child obtained by your school district or supervisory union, with the following conditions:

- If you request an independent educational evaluation of your child at public expense, your school district or supervisory union must, without unnecessary delay, either:
    - Request a hearing to show that its evaluation of your child is appropriate; or
    - Provide an independent educational evaluation at public expense.
- If your school district or supervisory union requests a hearing and the final decision is that your school district or supervisory union's evaluation of your child is appropriate, you still have the right to an independent educational evaluation, but not at public expense.
- If you request an independent educational evaluation of your child, your school district or supervisory union may ask why you object to the evaluation of your child obtained by your school district or supervisory union.
    - However, your school district or supervisory union may not require an explanation and may not unreasonably delay either providing the independent educational evaluation of your child at public expense or filing a due process complaint to request a due process hearing to defend your school district or supervisory union's evaluation of your child.

You are entitled to only one independent educational evaluation of your child at public expense each time your school district or supervisory union conducts an evaluation of your child with which you disagree.

Parent-initiated evaluations

If you obtain an independent educational evaluation of your child at public expense or you share with your school district or supervisory union an evaluation of your child that you obtained at private expense:

- Your school district or supervisory union must consider the results of the evaluation of your child, if it meets your school district or supervisory union's criteria for independent educational evaluations, in any decision made with respect to the provision of a free appropriate public education (FAPE) to your child; and
- You or your school district or supervisory union may present the evaluation as evidence at a due process hearing regarding your child.

Requests for evaluations by hearing officers

If a hearing officer requests an independent educational evaluation of your child as part of a due process hearing, the cost of the evaluation must be at public expense.

School District / Supervisory Union criteria

If an independent educational 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 that your school district or supervisory union uses when it initiates an evaluation.

Except for the criteria described above, a school district or supervisory union may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

Confidentiality of Information and Student Records

Definitions

Rule 2365.2

As used under the heading Confidentiality of Information and Student Records:

Destruction means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

Education records means the type of records covered under the definition of ‘‘education records’’ in 34 CFR Part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)).

School district or supervisory union means any school district or supervisory union, agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under IDEA and Vermont Special Education Rules.

Personally identifiable means information that has:

- Your child's name, your name as the parent, or the name of another family member;
- Your child's address;
- A personal identifier, such as your child’s social security number or student number; or
- A list of personal characteristics or other information that would make it possible to identify your child with reasonable certainty.

Notice to Parents

Rule 2365.2.1

The Vermont Department of Education must give notice that is adequate to fully inform parents about confidentiality of personally identifiable information, including:

- A description of the extent to which the notice is given in the native languages of the various population groups in the State;
- A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
- A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and

- A description of all of the rights of parents and children regarding this information, including the rights under the Family Educational Rights and Privacy Act (FERPA) and its implementing regulations in 34 CFR Part 99.

Before any major identification, location, or evaluation activity (also known as "child find"), the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity to locate, identify, and evaluate children in need of special education and related services.

Access Rights to records

Rule 2365.2.2

Your school district or supervisory union must permit you to inspect and review any education records relating to your child that are collected, maintained, or used by your school district or supervisory union under federal and state special education regulations.

Your school district or supervisory union must comply with your request to inspect and review any education records on your child without unnecessary delay and before any meeting regarding an individualized education program (IEP), or any impartial due process hearing (including a resolution meeting or a hearing regarding discipline), and in no case more than 45 calendar days after you have made a request.

Your right to inspect and review education records includes:

- Your right to a response from your school district or supervisory union to your reasonable requests for explanations and interpretations of the records;
- Your right to request that your school district or supervisory union provide copies of the records if you cannot effectively inspect and review the records unless you receive those copies; and
- Your right to have your representative inspect and review the records.
- Your school district or supervisory union may presume that you have authority to inspect and review records relating to your child unless advised that you do not have the authority under applicable State law governing such matters as guardianship, separation and/or divorce.

Record of Access

Rule 2365.2.3

Your school district or supervisory union must keep a record of parties obtaining access to education records collected, maintained, or used under federal and state special education regulations (except access by parents and authorized employees of your school district or supervisory union), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

Records on More Than One Child

Rule 2365.2.4

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

List of Types and Locations of Information

Rule 2365.2.5

Upon request, your school district or supervisory union must provide you with a list of the types and locations of education records collected, maintained, or used by the agency.

Fees

Rule 2365.2.6

Your school district or supervisory union may charge a fee for copies of records that are made for you under federal and state special education regulations, if the fee does not effectively prevent you from exercising your right to inspect and review those records.

Your school district or supervisory union may not charge a fee to search for or to retrieve information under federal and state special education regulations.

Amendment of Records at Parents' Request

Rule 2365.2.7

If you believe that information in the education records regarding your child collected, maintained, or used under federal and state special education regulations is inaccurate, misleading, or violates the privacy or other rights of your child, you may request your school district or supervisory union that maintains the information to change the information.

Your school district or supervisory union must decide whether to change the information in accordance with your request within a reasonable period of time of receipt of your request.

If your school district or supervisory union refuses to change the information in accordance with your request, it must inform you of the refusal and advise you of the right to a hearing for this purpose as described under the heading Opportunity For a Hearing.

Opportunity for a Hearing

Rule 2365.2.8

Your school district or supervisory union must, upon request, provide you an opportunity for a hearing to challenge information in education records regarding your child to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child.

A hearing to challenge information in education records must be conducted according to the procedures for such hearings under the Family Educational Rights and Privacy Act (FERPA).

Result of Hearing

Rule 2365.2.9

If, as a result of the hearing, your school district or supervisory union decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it must change the information accordingly and inform you in writing.

If, as a result of the hearing, your school district or supervisory union decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child, it must inform you of your right to place in the records that it maintains on your child a statement commenting on the information or providing any reasons you disagree with the decision of you school district or supervisory union.

Such an explanation placed in the records of your child must:

- Be maintained by your school district or supervisory union as part of the records of your child as long as the record or contested portion is maintained by your school district or supervisory union; and
- If your school district or supervisory union discloses the records of your child or the challenged portion to any party, the explanation must also be disclosed to that party.

Consent for Disclosure of Personally Identifiable Information

Rule 2365.2.11

With the exception of disclosures permitted to law enforcement and judicial authorities for which parental consent is not required by FERPA, your consent must be obtained before personally identifiable information is disclosed to parties other than officials of participating agencies. Except under the circumstances specified below, your consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of federal and state special education regulations.

Your consent, or consent of an eligible child who has reached the age of majority under State law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services.

If your child is in, or is going to go to, a independent school that is not located in the same school district or supervisory union you reside in, your consent must be obtained before any personally identifiable information about your child is released between officials in your school district or supervisory union where the independent school is located and officials in your school district or supervisory union where you reside.

Safeguards

Rule 2365.2.12

Your school district or supervisory union must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

One official at your school district or supervisory union must assume responsibility for ensuring the confidentiality of any personally identifiable information.

Your school district or supervisory union must have policies or procedures to ensure that all persons collecting or using personally identifiable information receive training or instruction regarding Vermont's policies and procedures under this rule and 34 CFR Part 99.

Your school district or supervisory union must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

Destruction of Information

Rule 2365.2.13

Your school district or supervisory union must inform you when personally identifiable information collected, maintained, or used is no longer needed to provide educational services to your child.

The information must be destroyed at your request. However, a permanent record of your child's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

Administrative Complaint Procedures

Difference between Due Process Hearing Complaint and Administrative Complaint Procedures

The Vermont Special Education rules set forth separate procedures for administrative complaints and for due process complaints and hearings. As explained below, any individual or organization may file an administrative complaint alleging a violation of any IDEA and Vermont Special Education Rules requirement by a school district or supervisory union, the Vermont Department of Education, or any other public agency.

Only you or a school district or supervisory union may file a due process complaint on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation or educational placement of a child with a disability, or the provision of a free appropriate public education (FAPE) to the child. While the Commissioner of the Vermont Department of Education generally must resolve a State complaint within a 60-calendar-day timeline, unless the timeline is properly extended, an impartial due process hearing officer must hear a due process complaint (if not resolved through a resolution meeting or through mediation) and issue a written decision within 45-calendar-days after the end of the resolution period, as described in this document under the heading Resolution Process, unless the hearing officer grants a specific extension of the timeline at your request or your school district or supervisory union's request. The administrative complaint and due process complaint, resolution and hearing procedures are described more fully below.

Administrative Complaint Procedures

Rule 2365.1.5

Any person or organization alleging that a school district or supervisory union or public agency has acted contrary to the requirements of IDEA and Vermont Special Education Rules may file a signed written complaint with the Commissioner of Education and forward a copy of the complaint to your school district or supervisory union or public agency serving the child at the same time.

The complaint must include--

- A statement that a public agency has violated a requirement of IDEA and Vermont Special Education Rules;
- The facts on which the statement is based;
- The signature and contact information for the complainant; and
- If alleging violations against a specific child--
- The name and address of the residence of the child;
- The name of the school the child is attending;

- In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending;
- A description of the nature of the problem of the child, including facts relating to the problem; and
- A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

Except for due process complaints covered under Rule 2365.1.6, the complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received.

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 your school district or supervisory union. At the discretion of the complaint investigator, the complaint may be investigated by way of a document review, meeting, hearing, on-site investigation, or any combination thereof. A complaint investigator may give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint. A complaint investigator may also give the public agency the opportunity to respond with a proposal to resolve the complaint, or, with your consent, an opportunity to engage you in mediation or alternative means of dispute resolution.

If a hearing is scheduled, the complaint investigator shall have the powers and duties set forth below:

- Conduct pre-hearing conferences;
- Conduct any hearings that may be required;
- Prepare proposed findings of facts and conclusions of law for a decision by the hearing authority; and
- Any other powers and duties set forth in State Board of Education Rule 1236.1.

No later than sixty days after receipt of the complaint, the Commissioner shall issue a written decision. This time limit may be extended only if exceptional circumstances exist with respect to a particular complaint.

When a complaint investigation determines that there has been a failure to provide appropriate services, the investigation report shall address how to remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child, as well as appropriate future provision of services for all children with disabilities.

If a written complaint is received that is also the subject of a due process hearing, or contains multiple issues, of which one or more are part of that hearing, the investigation

shall set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing.

However, any issue in the complaint that is not a part of the due process action shall be resolved using the time limit and procedures described above.

If an issue is raised in a complaint that has previously been decided in a due process hearing involving the same parties, the hearing decision is binding and the complainant shall be informed to that effect.

A complaint may also be filed regarding provision of Part C of the IDEA. Investigation of a Part C complaint shall be completed in coordination with the Agency of Human Services, Department of Health, Child Development Division. A written complaint should be sent to the Director of the Family, Infant, and Toddler Program at 103 S. Main Street, Waterbury, Vermont 05671-0204.

Due Process Complaint Procedures

Due Process Complaint

Rule 2365.1.6

General

You or your school district or supervisory union may file a due process complaint on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation or educational placement of your child, or the provision of a free appropriate public education (FAPE) to your child.

The due process complaint must allege a violation that happened not more than two years before you or your school district or supervisory union knew or should have known about the alleged action that forms the basis of the due process complaint. Except, if you have unilaterally placed your child in an independent school and are seeking reimbursement, the due process complaint must be filed within 90 days of the placement.

The above timeline does not apply to you if you could not file a due process complaint within the timeline because:

- Your school district or supervisory union specifically misrepresented that it had resolved the issues identified in the complaint; or
- Your school district or supervisory union withheld information from you that it was required to provide you under IDEA and Vermont Special Education Rules.

Information for parents

Your school district or supervisory union must inform you of any free or low-cost legal and other relevant services available in the area if you request the information, or if you or your school district or supervisory union file a due process complaint.

Initiation of Due Process Hearing

Rule 2365.1.6.2 – 2365.1.6.6

General

In order to request a hearing, you or your school district or supervisory union (or your attorney or your school district or supervisory union's attorney) must submit a due process complaint to the other party. That complaint must contain all of the content listed below and must be kept confidential.

You or your school district or supervisory union, whichever one filed the complaint, must also provide the Vermont Department of Education with a copy of the complaint using a form provided by the Commissioner.

Content of the complaint

The due process complaint must include:

- The name of the child;
- The address of the child's residence;
- The name of the child's school;
- If the child is a homeless child or youth, the child's contact information and the name of the child's school;
- A description of the nature of the problem of the child relating to the proposed or refused action, including facts relating to the problem; and
- A proposed resolution of the problem to the extent known and available to you or your school district or supervisory union at the time.

Notice required before a hearing on a due process complaint

You or your school district or supervisory union may not have a due process hearing until you or your school district or supervisory union (or your attorney or your school district or supervisory union's attorney), files a due process complaint that includes the information listed above.

Sufficiency of complaint

In order for a due process complaint to go forward, it must be considered sufficient. The due process complaint will be considered sufficient (to have met the content requirements above) unless the party receiving the due process complaint (you or your school district or supervisory union) notifies the hearing officer and the other party in writing, within 15 calendar days of receiving the complaint, that the receiving party believes that the due process complaint does not meet the requirements listed above.

Within five calendar days of receiving the notification that the receiving party (you or your school district or supervisory union) considers a due process complaint insufficient, the hearing officer must decide if the due process complaint meets the requirements listed above, and notify you and your school district or supervisory union in writing immediately.

Complaint amendment

You or your school district or supervisory union may make changes to the complaint only if:

- The other party approves of the changes in writing and is given the chance to resolve the due process complaint through a resolution meeting, described below; or
- By no later than five days before the due process hearing begins, the hearing officer grants permission for the changes.

If the complaining party (you or your school district or supervisory union) makes changes to the due process complaint, the timelines for the resolution meeting (within 15 calendar days of receiving the complaint) and the time period for resolution (within 30 calendar days of receiving the complaint) start again on the date the amended complaint is filed.

School District or supervisory union response to a due process complaint

If your school district or supervisory union has not sent a prior written notice to you, as described under the heading Prior Written Notice, regarding the subject matter contained in your due process complaint, your school district or supervisory union must, within 10 calendar days of receiving the due process complaint, send to you a response that includes:

1. An explanation of why your school district or supervisory union proposed or refused to take the action raised in the due process complaint;
2. A description of other options that your child's individualized education program (IEP) Team considered and the reasons why those options were rejected;
3. A description of each evaluation procedure, assessment, record, or report your school district or supervisory union used as the basis for the proposed or refused action; and
4. A description of the other factors that are relevant to your school district or supervisory union’s proposed or refused action.

Providing the information in items 1-4 above does not prevent your school district or supervisory union from asserting that your due process complaint was insufficient.

Other party response to a due process complaint

Except as stated under the sub-heading immediately above, school district or supervisory union response to a due process complaint, the party receiving a due process complaint must, within 10 calendar days of receiving the complaint, send the other party a response that specifically addresses the issues in the complaint.

Mediation

Rule 2365.1.4

General

A mediation process administered by the Commissioner is available to parents of students with disabilities, school district or supervisory unions and other public agencies with a special education dispute, including matters arising prior to the filing of a due process complaint.

Requirements

The procedures must ensure that the mediation process:

- Is voluntary on your part and your school district or supervisory union's part;
- Is not used to deny or delay your right to a due process hearing, or to deny any other rights you have under IDEA and Vermont Special Education Rules; and

- Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

The Department of Education has a list of people who are qualified and impartial mediators and know the laws and regulations relating to the provision of special education and related services.

The Department of Education is responsible for the cost of the mediation process, including the costs of meetings.

Each meeting in the mediation process must be scheduled in a timely manner and held at a place that is convenient for you and your school district or supervisory union.

If you and your school district or supervisory union resolve a dispute through the mediation process, both parties must enter into a legally binding agreement that sets forth the resolution and that:

- States that all discussions that happened during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and
- Is signed by both you and a representative of your school district or supervisory union who has the authority to bind your school district or supervisory union.

A written, signed mediation agreement is enforceable in any State court of competent jurisdiction (a court that has the authority under State law to hear this type of case) or in a district court of the United States.

Discussions that happened during the mediation process must be confidential. They cannot be used as evidence in any future due process hearing or civil proceeding of any Federal court or State court of a State receiving assistance under IDEA and Vermont Special Education Rules.

Written requests for mediation shall be submitted to the Vermont Department of Education, Special Education Mediation Service (VDE-SEMS), 120 State Street, Montpelier, Vermont 05620-2501.

Upon receipt of such request, the Department will send you the Parents' Rights in Special Education Notice and will send its mediation procedures to all parties to the mediation.

The agreement to mediate shall be in writing on a form approved by the Commissioner and signed by all parties. If the request cannot be in writing due to special circumstances, such as an inability to communicate in writing, the request may be made through other means of communication.

Impartiality of mediator

The mediator:

- May not be an employee of the Vermont Department of Education or your school district or supervisory union that is involved in the education or care of your child; and
- Must not have a personal or professional interest which conflicts with the mediator's objectivity.

A person who otherwise qualifies as a mediator is not an employee of a school district or supervisory union or the Vermont Department of Education solely because he or she is paid by the VTDOE or school district or supervisory union to serve as a mediator.

The Child's Placement While the Due Process Complaint and Hearing Are Pending

Rule 2365.1.11

Except as provided below under the heading Procedures When Disciplining Children With Disabilities, once a due process complaint is sent to the other party, during the resolution process time period, and while waiting for the decision of any impartial due process hearing or court proceeding, unless you and your school district or supervisory union agree otherwise, your child must remain in his or her current educational placement.

If the due process complaint involves an application for initial admission to public school, your child, with your consent, must be placed in the regular public school program until the completion of all such proceedings.

If the decision of a hearing officer in a due process hearing agrees with the child's parents that a change of placement is appropriate, that placement shall be treated as an agreement between your school district or supervisory union and you.

If the due process complaint involves an application for initial services under IDEA and Vermont Special Education Rules for a child who is transitioning from being served under Part C of the IDEA to IDEA and Vermont Special Education Rules and who is no longer eligible for Part C services because the child has turned three, your school district or supervisory union is not required to provide the Part C services that the child has been receiving.

If the child is found eligible under IDEA and Vermont Special Education Rules and you consent for the child to receive special education and related services for the first time, then, pending the outcome of the proceedings, your school district or supervisory union must provide those special education and related services that are not in dispute (those which you and your school district or supervisory union both agree upon).

Resolution Session

Rule 2365.1.8

Resolution meeting

Within 15 calendar days of receiving notice of your due process complaint, and before the due process hearing begins, your school district or supervisory union must convene a meeting with you and the relevant member or members of the individualized education program (IEP) Team who have specific knowledge of the facts identified in your due process complaint. The meeting:

- Must include a representative of your school district or supervisory union who has decision-making authority on behalf of your school district or supervisory union; and

- May not include an attorney of your school district or supervisory union unless you are accompanied by an attorney.

You and your school district or supervisory union determine the relevant members of the IEP Team to attend the meeting.

The purpose of the meeting is for you to discuss your due process complaint, and the facts that form the basis of the complaint, so that your school district or supervisory union has the opportunity to resolve the dispute.

The resolution meeting is not necessary if:

- You and your school district or supervisory union agree in writing to waive the meeting; or
- You and your school district or supervisory union agree to use the mediation process, as described under the heading Mediation.

Resolution period

If your school district or supervisory union has not resolved the due process complaint to your satisfaction within 30 calendar days of the receipt of the due process complaint (during the time period for the resolution process), the due process hearing may occur.

The 45-calendar-day timeline for issuing a final decision begins at the expiration of the 30-calendar-day resolution period, with certain exceptions for adjustments made to the 30-calendar-day resolution period, as described below.

Except where you and your school district or supervisory union have both agreed to waive the resolution process or to use mediation, your failure to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until you agree to participate in a meeting.

If after making reasonable efforts and documenting such efforts, your school district or supervisory union is not able to obtain your participation in the resolution meeting, your school district or supervisory union may, at the end of the 30-calendar-day resolution period, request that a hearing officer dismiss your due process complaint.

Documentation of such efforts must include a record of your school district or supervisory union’s attempts to arrange a mutually agreed upon time and place, such as:

- Detailed records of telephone calls made or attempted and the results of those calls;
- Copies of correspondence sent to you and any responses received; and
- Detailed records of visits made to your home or place of employment and the results of those visits.

If your school district or supervisory union fails to hold the resolution meeting within 15 calendar days of receiving notice of your due process complaint or fails to participate in the resolution meeting, you may ask a hearing officer to order that the 45-calendar-day due process hearing timeline begin.

Adjustments to the 30-calendar-day resolution period

If you and your school district or supervisory union agree in writing to waive the resolution meeting, then the 45-calendar-day timeline for the due process hearing starts the next day.

After the start of mediation or the resolution meeting and before the end of the 30-calendar-day resolution period, if you and your school district or supervisory union agree in writing that no agreement is possible, then the 45-calendar-day timeline for the due process hearing starts the next day.

If you and your school district or supervisory union agree to use the mediation process, at the end of the 30-calendar-day resolution period, both parties can agree in writing to continue the mediation until an agreement is reached.

However, if either you or your school district or supervisory union withdraws from the mediation process, then the 45-calendar-day timeline for the due process hearing starts the next day.

Written settlement agreement

If a resolution to the dispute is reached at the resolution meeting, you and your school district or supervisory union must enter into a legally binding agreement that is:

- Signed by you and a representative of your school district or supervisory union who has the authority to bind your school district or supervisory union; and
- Enforceable in any State court of competent jurisdiction (a State court that has authority to hear this type of case) or in a district court of the United States.

Agreement review period

If you and your school district or supervisory union enter into an agreement as a result of a resolution meeting, either party (you or your school district or supervisory union) may void the agreement within 3 business days of the time that both you and your school district or supervisory union signed the agreement.

Hearings on Due Process Complaints

Impartial Due Process Hearing

34 CFR §300.511

Whenever a due process complaint is filed, you or your school district or supervisory union involved in the dispute must have an opportunity for an impartial due process hearing, as described in the Due Process Complaint and Resolution Process sections. The Vermont Department of Education is responsible for convening due process hearings.

Impartial hearing officer

At a minimum, a hearing officer:

- Must not be an employee of the Vermont Department of Education or your school district or supervisory union or an agency that is involved in the education or care of children. However, a person is not an employee of the agency solely because he/she is paid by the agency to serve as a hearing officer;
- Must not have a personal or professional interest that conflicts with the hearing officer's objectivity in the hearing;
- Must be a licensed attorney;
- Must be knowledgeable and understand the provisions of the IDEA, and Federal and State regulations pertaining to the IDEA, and legal interpretations of the IDEA by Federal and State courts; and
- Must have the knowledge and ability to conduct hearings, and to make and write decisions, consistent with appropriate, standard legal practice.

The Vermont Department of Education will keep a list of those persons who serve as hearing officers that includes a statement of the qualifications of each hearing officer.

Subject matter of due process hearing

The party (you or your school district or supervisory union) that requests the due process hearing may not raise issues at the due process hearing that were not addressed in the due process complaint, unless the other party agrees.

Timeline for requesting a hearing

You or your school district or supervisory union must request an impartial hearing on a due process complaint within two years of the date you or your school district or supervisory union knew or should have known about the issue addressed in the complaint.

Exceptions to the timeline

The above timeline does not apply to you if you could not file a due process complaint because:

- Your school district or supervisory union specifically misrepresented that it had resolved the problem or issue that you are raising in your complaint; or
- Your school district or supervisory union withheld information from you that it was required to provide to you under IDEA and Vermont Special Education Rules.

Hearing Procedures

Rule 2365.1.6.15

General

Any party to a due process hearing (including a hearing relating to disciplinary procedures) has the right to:

- Be accompanied and advised by a lawyer and/or persons with special knowledge or training regarding the problems of children with disabilities;

- Present evidence and confront, cross-examine, and require the attendance of witnesses;
- Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;
- Obtain a written, or, at your option, electronic, word-for-word record of the hearing; and
- Obtain written, or, at your option, electronic findings of fact and decisions.

Additional disclosure of information

At least five business days prior to a due process hearing, you and your school district or supervisory union must disclose to each other all evaluations completed by that date and recommendations based on those evaluations that you or your school district or supervisory union intend to use at the hearing.

A hearing officer may prevent any party that fails to comply with this requirement from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

Parental rights at hearings

You must be given the right to:

- Have your child present;
- Open the hearing to the public; and
- Have the record of the hearing, the findings of fact and decisions provided to you at no cost.

Decision of Hearing Officer

Rule 2365.1.16(c)

A hearing officer's decision on whether your child received a free appropriate public education (FAPE) must be based on substantive grounds.

In matters alleging a procedural violation, a hearing officer may find that your child did not receive FAPE only if the procedural inadequacies:

- Interfered with your child's right to a free appropriate public education (FAPE);
- Significantly interfered with your opportunity to participate in the decision-making process regarding the provision of a free appropriate public education (FAPE) to your child; or
- Caused a deprivation of an educational benefit.

Nothing precludes a hearing officer from ordering a school district or supervisory union to comply with procedural requirements under Rule 2365.1 through 2365.1.13.

Findings and decision to the general public

The Vermont Department of Education, after deleting any personally identifiable information, must:

- Provide the findings and decisions in the due process hearing; and
- Make those findings and decisions available to the public.

Appeals

Rule 2365.1.8

Finality of hearing decision

A decision made in a due process hearing (including a hearing relating to disciplinary procedures) is final, except that any party involved in the hearing (you or your school district or supervisory union) may appeal the decision by bringing a civil action, as described below.

Timelines and Convenience of Hearings and Reviews

Rule 2365.1.16 (a) & (b)

The Vermont Department of Education must ensure that not later than 45 calendar days after the expiration of the 30-calendar-day period for resolution meetings or, as described under the sub-heading Adjustments to the 30-calendar-day resolution period, not later than 45 calendar days after the expiration of the adjusted time period:

- A final decision is reached in the hearing; and
- A copy of the decision is mailed to each of the parties.
- A hearing officer may grant specific extensions of time beyond the 45-calendar-day time period described above at the request of either party, if:
    - The child's educational progress or well-being would not be jeopardized by the delay;
    - The party would not have adequate time to prepare and present the party's position at the hearing in accordance with the requirements of due process; and
    - The need for the delay is greater than any financial or other detrimental consequences likely to be suffered by a party in the event of the delay.

Each hearing must be conducted at a time and place that is reasonably convenient to you and your child.

Civil Actions

Rule 2365.1.9

General

Any party (you or your school district or supervisory union) who does not agree with the findings and decision in the due process hearing (including a hearing relating to disciplinary procedures) has the right to bring a civil action with respect to the matter that was the subject of the due process hearing.

The action may be brought in a State court of competent jurisdiction (a State court that has authority to hear this type of case) or in a district court of the United States without regard to the amount in dispute.

Time limitation

The party (you or your school district or supervisory union) bringing the action shall have 90 calendar days from the date of the decision of the hearing officer to file a civil action.

Additional procedures

In any civil action, the court:

- Receives the records of the administrative proceedings;
- Hears additional evidence at your request or at your school district or supervisory union's request; and
- Bases its decision on the preponderance of the evidence and grants the relief that the court determines to be appropriate.

Jurisdiction of district courts

The district courts of the United States have authority to rule on actions brought under IDEA and Vermont Special Education Rules without regard to the amount in dispute.

Rule of construction

Nothing in IDEA and Vermont Special Education Rules restricts or limits the rights, procedures, and remedies available under the U.S. Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973 (Section 504), or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under IDEA and Vermont Special Education Rules, the due process procedures described above must be exhausted to the same extent as would be required if the party filed the action under IDEA and Vermont Special Education Rules.

This means that you may have remedies available under other laws that overlap with those available under the IDEA, but in general, to obtain relief under those other laws; you must first use the available administrative remedies under the IDEA (i.e., the due process complaint, resolution meeting, and impartial due process hearing procedures) before going directly into court.

Attorneys' Fees

Rule 2365.1.10

General

In any action or proceeding brought under IDEA and Vermont Special Education Rules, if you prevail, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to you.

In any action or proceeding brought under IDEA and Vermont Special Education Rules, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to a

prevailing Vermont Department of Education or school district or supervisory union, to be paid by your attorney, if the attorney:

- filed a complaint or court case that the court finds is frivolous, unreasonable, or without foundation; or
- continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

In any action or proceeding brought under IDEA and Vermont Special Education Rules, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to a prevailing Vermont Department of Education or school district or supervisory union, to be paid by you or your attorney, if your request for a due process hearing or later court case was presented for any improper purpose, such as:

- To harass,
- To cause unnecessary delay, or
- To unnecessarily increase the cost of the action or proceeding.

Award of fees

A court awards reasonable attorneys' fees as follows:

- Fees must be based on rates prevailing in the community in which the action or hearing arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded.
- Fees may not be awarded and related costs may not be reimbursed in any action or proceeding under IDEA and Vermont Special Education Rules for services performed after a written offer of settlement to you if:
    - The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of a due process hearing or State-level review, at any time more than 10 calendar days before the proceeding begins;
    - The offer is not accepted within 10 calendar days; and
    - The court or administrative hearing officer finds that the relief finally obtained by you is not more favorable to you than the offer of settlement.
    - Despite these restrictions, an award of attorneys' fees and related costs may be made to you if you prevail and you were substantially justified in rejecting the settlement offer.
- Fees may not be awarded relating to any meeting of the individualized education program (IEP) Team unless the meeting is held as a result of an administrative proceeding or court action.
- Fees may not be awarded for a mediation as described under the heading Mediation.
    - A resolution meeting, as described under the heading Resolution meeting, is not considered a meeting convened as a result of an administrative

hearing or court action, and also is not considered an administrative hearing or court action for purposes of these attorneys' fees provisions.

- The court may reduce, as appropriate, the amount of the attorneys' fees awarded under IDEA and Vermont Special Education Rules, if the court finds that:
    - You, or your attorney, during the course of the action or proceeding, unreasonably delayed the final resolution of the dispute;
    - The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably similar skill, reputation, and experience;
    - The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or
    - The attorney representing you did not provide to your school district or supervisory union the appropriate information in the due process request notice as described under the heading Due Process Complaint.
        - However, the court may not reduce fees if the court finds that the State or school district or supervisory union unreasonably delayed the final resolution of the action or proceeding or there was a violation under the procedural safeguards provisions of IDEA and Vermont Special Education Rules.

Procedures When Disciplining Children with Disabilities

Authority of School Personnel

Rule 4313.1

Case-by-case determination

School personnel may consider any unique circumstances on a case-by-case basis, when determining whether a change of placement, made in accordance with the following requirements related to discipline, is appropriate for a child with a disability who violates a school code of student conduct.

General authority

To the extent that they also take such action for children without disabilities, school personnel may, for not more than 10 school days in a row, remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting (which must be determined by the child's individualized education program (IEP) Team), another setting, or suspension. School personnel may also impose additional removals of the child of not more than 10 school days in a row in that same school year for separate incidents of misconduct; as long as those removals do not constitute a change of placement (see Change of Placement Because of Disciplinary Removals for the definition, below).

Once a child with a disability has been removed from his or her current placement for a total of 10 school days in the same school year, your school district or supervisory union must, during any subsequent days of removal in that school year, provide services to the extent required below under the sub-heading Services.

Additional authority

If the behavior that violated the student code of conduct was not a manifestation of the child’s disability (see Manifestation determination, below) and the disciplinary change of placement would exceed 10 school days in a row, school personnel may apply the disciplinary procedures to that child with a disability in the same manner and for the same duration as it would to children without disabilities, except that the school must provide services to that child as described below under Services.

The child’s IEP Team determines the interim alternative educational setting for such services.

Services

The services that must be provided to a child with a disability who has been removed from the child’s current placement may be provided in an interim alternative educational setting.

A school district or supervisory union is only required to provide services to a child with a disability who has been removed from his or her current placement for 10 school days

or less in that school year, if it provides services to a child without disabilities who has been similarly removed.

A child with a disability who is removed from the child's current placement for more than 10 school days must:

- Continue to receive educational services, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and
- Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, which are designed to address the behavior violation so that it does not happen again.

After a child with a disability has been removed from his or her current placement for 10 school days in that same school year, and if the current removal is for 10 school days in a row or less and if the removal is not a change of placement (see definition below), then school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

If the removal is a change of placement (see definition below), the child's IEP Team determines the appropriate services to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

Manifestation determination

Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct (except for a removal that is for 10 school days in a row or less and not a change of placement), your school district or supervisory union, you, and relevant members of the IEP Team (as determined by you and your school district or supervisory union) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by you to determine:

- If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
- If the conduct in question was the direct result of your school district or supervisory union's failure to implement the child's IEP.

If your school district or supervisory union, you, and relevant members of the child's IEP Team determine that either of those conditions was met, the conduct must be determined to be a manifestation of the child's disability.

If your school district or supervisory union, you, and relevant members of the child's IEP Team determine that the conduct in question was the direct result of your school district or supervisory union's failure to implement the IEP, your school district or supervisory union must take immediate action to remedy those deficiencies.

Determination that behavior was a manifestation of the child's disability

If your school district or supervisory union, you, and relevant members of the IEP Team determine that the conduct was a manifestation of the child's disability, the IEP Team must either:

- Conduct a functional behavioral assessment, unless your school district or supervisory union had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or
- If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior.

Except as described below under the sub-heading Special circumstances, your school district or supervisory union must return the child to the placement from which the child was removed, unless you and the school district or supervisory union agree to a change of placement as part of the modification of the behavioral intervention plan.

Special circumstances

Whether or not the behavior was a manifestation of the child's disability, school personnel may remove a student to an interim alternative educational setting (determined by the child's IEP Team) for up to 45 school days, if the child:

- Carries a weapon (see the definition below) to school or has a weapon at school, on school premises, or at a school function under the jurisdiction of the Vermont Department of Education or a school district or supervisory union;
- Knowingly has or uses illegal drugs (see the definition below), or sells or solicits the sale of a controlled substance, (see the definition below), while at school, on school premises, or at a school function under the jurisdiction of the Vermont Department of Education or a school district or supervisory union; or
- Has inflicted serious bodily injury (see the definition below) upon another person while at school, on school premises, or at a school function under the jurisdiction of the Vermont Department of Education or a school district or supervisory union.

Definitions

"Controlled substance" means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

Illegal drug means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

"Serious bodily injury" has the meaning given the term ''serious bodily injury'' under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.

"Weapon" has the meaning given the term ''dangerous weapon'' under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

Notification

On the date it makes the decision to make a removal that is a change of placement of the child because of a violation of a code of student conduct, your school district or supervisory union must notify you of that decision, and provide you with a procedural safeguards notice.

Change of Placement Because of Disciplinary Removals

Rule 4313.7

A removal of a child with a disability from the child's current educational placement is a change of placement if:

- The removal is for more than 10 school days in a row; or
- The child has been subjected to a series of removals that constitute a pattern because:
- The series of removals total more than 10 school days in a school year;
- The child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; or
- Such additional factors as:
    - the length of each removal,
    - the total amount of time the child has been removed, and
    - the proximity of the removals to one another; and
    - Whether a pattern of removals constitutes a change of placement is determined on a case-by-case basis by your school district or supervisory union and, if challenged, is subject to review through due process and judicial proceedings.

Determination of Setting

Rule 4313.2

The individualized education program (IEP) Team must determine the interim alternative educational setting for removals that are changes of placement, and removals under the headings Additional authority and Special circumstances, above.

Appeal

Rule 4313.3

You may file a due process complaint (see above) to request a due process hearing if he or she disagrees with:

- Any decision regarding placement made under these discipline provisions; or
- The manifestation determination described above.

Your school district or supervisory union may file a due process complaint (see above) to request a due process hearing if it believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

Authority of hearing officer

A hearing officer that meets the requirements described under the sub-heading Impartial Hearing Officer must conduct the due process hearing and make a decision. The hearing officer may:

- Return the child with a disability to the placement from which the child was removed, if the hearing officer determines:
    - that the removal was a violation of the requirements described under the heading Authority of School Personnel, or
    - that the child's behavior was a manifestation of the child's disability; or
- Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

These hearing procedures may be repeated, if your school district or supervisory union believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

Expedited Due Process Hearing

Whenever a parent or a school district or supervisory union files a due process complaint to request such a hearing, a hearing must be held that meets the requirements described under the headings Due Process Complaint Procedures, Hearings on Due Process Complaints, except the Vermont Department of Education must arrange for an expedited due process hearing, which must occur within 20 school days of the date the hearing is requested and must result in a determination within 10 school days after the hearing.

Unless you and your school district or supervisory union agree in writing to waive the meeting, or agree to use mediation, a resolution meeting must occur within seven calendar days of receiving notice of the due process complaint.

The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 calendar days of receipt of the due process complaint.

A party may appeal the decision in an expedited due process hearing in the same way as they may for decisions in other due process hearings (see Appeals, above).

Placement During Appeals

Rule 4313.4

When, as described above, you or school district or supervisory union has filed a due process complaint related to disciplinary matters, the child must (unless you and your

school district or supervisory union agree otherwise) remain in the interim alternative educational setting pending the decision of the hearing officer, or until the expiration of the time period of removal as provided for and described under the heading Authority of School Personnel, whichever occurs first.

Protections for Children Not Yet Eligible for Special Education and Related Services

Rule 4313.5

General Protections

If a child has not been determined eligible for special education and related services and violates a code of student conduct, but your school district or supervisory union had knowledge (as determined below) before the behavior that brought about the disciplinary action occurred, that the child was a child with a disability, then the child may assert any of the protections described in this notice.

Basis of knowledge for disciplinary matters

A school district or supervisory union must be deemed to have knowledge that a child is a child with a disability if, before the behavior that brought about the disciplinary action occurred:

- You expressed concern in writing that the child is in need of special education and related services to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child;
- You requested an evaluation related to eligibility for special education and related services under IDEA and Vermont Special Education Rules; or
- The child's teacher, or other school district or supervisory union personnel expressed specific concerns about a pattern of behavior demonstrated by the child directly to your school district or supervisory union's Director of Special Education or to other supervisory personnel of your school district or supervisory union.

A school district or supervisory union would not be deemed to have such knowledge if:

- The child's parent has not allowed an evaluation of the child or refused special education services; or
- The child has been evaluated and determined to not be a child with a disability under IDEA and Vermont Special Education Rules.

Conditions that apply if there is no basis of knowledge

If prior to taking disciplinary measures against the child, a school district or supervisory union does not have knowledge that a child is a child with a disability, as described above under the sub-heading Basis of knowledge for disciplinary matters, the child may be subjected to the disciplinary measures that are applied to children without disabilities who engaged in comparable behaviors.

However, if a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner.

Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by your school district or supervisory union, and information provided by you, your school district or supervisory union must provide special education and related services in accordance with IDEA and Vermont Special Education Rules, including the disciplinary requirements described above.

Referral to and Action by Law Enforcement and Judicial Authorities

Rule 4313.6

Nothing in these rules:

- Prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities; or
- Prevents State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

Transmittal of records

If a school district or supervisory union reports a crime committed by a child with a disability, the school district or supervisory union:

- Must ensure that copies of the child's special education and disciplinary records are transmitted for consideration by the authorities to whom the agency reports the crime; and
- May transmit copies of the child's special education and disciplinary records only to the extent permitted by the Family Educational Rights and Privacy Act (FERPA).

Requirements for Parental Placement in Independent Schools at Public Expense

General Requirements

Rule 2368.4

IDEA and Vermont Special Education Rules do not require a school district or supervisory union to pay for the cost of education, including special education and related services, of your child with a disability at an independent school if your school district or supervisory union made a free appropriate public education (FAPE) available to your child and you choose to place the child in an independent school. However, the school district or supervisory union where the independent school is located must include your child in the population whose needs are considered under the IDEA and Vermont Special Education Rules regarding children who have been placed by their parents in independent schools.

Reimbursement for independent school placement

If your child previously received special education and related services under the authority of a school district or supervisory union, and you choose to enroll your child in an independent elementary school or secondary school without the consent of or referral by your school district or supervisory union, a court or a hearing officer may require the agency to reimburse you for the cost of that enrollment if:

- The court or hearing officer finds that the agency had not made a free appropriate public education (FAPE) available to your child in a timely manner prior to that enrollment, and
- That the independent placement is appropriate.
    - A hearing officer or court may find your placement to be appropriate, even if the placement does not meet the State standards that apply to education provided by school district or supervisory unions.

Limitation on reimbursement

The cost of reimbursement described in the paragraph above may be reduced or denied, if:

- At the most recent individualized education program (IEP) meeting that you attended prior to your removal of your child from the public school, you did not inform the IEP Team that you were rejecting the placement proposed by your school district or supervisory union to provide FAPE to your child, including stating your concerns and your intent to enroll your child in a independent school at public expense; or
- At least 10 business days (including any holidays that occur on a business day) prior to your removal of your child from the public school, you did not give written notice to your school district or supervisory union of that information;

- Prior to your removal of your child from the public school, your school district or supervisory union provided prior written notice to you, of its intent to evaluate your child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but you did not make the child available for the evaluation; or
- Upon a court's finding that your actions were unreasonable.

However, the cost of reimbursement:

- Must not be reduced or denied for failure to provide the notice if:
    - The school prevented you from providing the notice;
    - You had not received notice of your responsibility to provide the notice described above; or
    - Compliance with the requirements above would likely result in physical harm to your child; and
- May, in the discretion of the court or a hearing officer, not be reduced or denied for your failure to provide the required notice if:
    - You cannot read or write in English; or
    - Compliance with the above requirement would likely result in serious emotional harm to your child.