

Rule XX: Open Enrollment

An approved independent school is not required to accept publicly funded students. If an independent school opts to accept publicly funded students, then on or before February 1¹ each year, the independent school shall define and announce the number of publicly funded students it will enroll under this section. Capacity considerations may include limits based on the space available in the program, class, grade, or school building, measurable adverse financial impact, or other factors, but shall not be based on the need to provide special education services.

If more than the allowable number of students wish to attend a school under this section, then the school shall devise a nondiscriminatory lottery system for determining which students may attend.

- (a) Application and notification.
 - (1) An independent school shall accept applications for enrollment for publicly funded openings until March 1 of the school year preceding the school year for which the student is applying. Independent schools shall not ask applicants to disclose information regarding eligibility for special education under the IDEA. If a student applicant discloses in the application process that he or she is eligible for special education under IDEA, the independent school shall not deny that student enrollment.
 - (2) An independent school shall notify each publicly funded student of acceptance or rejection of the application by April 1 of the school year preceding the school year for which the student is applying.
 - (3) An accepted student shall notify the independent school of his or her decision to enroll or not to enroll by April 15 of the school year preceding the school year for which the student has applied; provided, however, that if a student is eligible for special education services, the IEP team shall meet pursuant to Rule 2223, make a determination about the ability of the independent school to provide the services required by the student's IEP, and notify the independent school by May 1.
- (b) Enrollment.
 - (1) An enrolled publicly funded student shall be permitted to remain enrolled in the independent school without renewed applications in subsequent years unless:
 - (a) the student graduates;
 - (b) the student is no longer a resident of the district which pays tuition;
 - (c) an IEP team determines that an independent school is unable to provide the services and supports required by a student's IEP; or
 - (d) the student is expelled from school in accordance with this section.
- (c) Suspension and expulsion.
 - (1) An independent school is not required to provide services to a resident student during a period of suspension or expulsion imposed by another high school district.

¹ All dates could be modified to conform to the independent school admissions schedule. These are the dates from 16 VSA 822a, which may not make sense in the independent school context.

- (2) When a publicly funded student is subject to disciplinary action, the independent school shall afford the student due process procedures as follows:
- (a) 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 section (2)(c), 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;
 - (b) In cases of a long term suspension which is generally more than 10 days, unless a school establishes a shorter period, the student and his or her parent/guardian shall be given an opportunity for a formal hearing before the proper administrator and the school shall provide:
 - (i) 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;
 - (ii) opportunity to present evidence;
 - (iii) opportunity to cross-examine witnesses;
 - (iv) decision in writing to parent/guardian.
 - (c) 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 independent school may take whatever action is appropriate under the circumstances, including, but not limited to, immediate suspension pending a hearing as soon as possible thereafter.
 - (d) If an enrolled student is eligible for special education services, the independent school shall follow the discipline and due process requirements of Rule 4313.

2223 Special Education Services

In order for an independent school to admit publicly funded students, the school must employ or have access to a licensed special educator.

If a publicly funded student is admitted to an independent school under the open enrollment process described in Rule XX, and that student is eligible for special education services, a meeting of the student's IEP team shall be called to determine what special education and related services the student will need to be successful in the independent school, and update the student's IEP goals and services accordingly. The independent school shall appoint a representative to attend the IEP team meeting as part of the enrollment process.

If the school district of residence determines that paying tuition to an independent school is not permissible under Rule 2228.2(1) due to lack of approval in a specific disability category, the local educational agency (LEA) and the independent school and the Agency of Education shall work together to determine how services and supports can be provided within the independent school until the independent school obtains Agency approval under Rule 2228, provided that the independent school shall obtain approval for an enrolled student's disability category within the school year when the student first enrolled.

Keep current SBE Rule 2228. Under the current Draft Rule, Section 2228 is stricken.

