# Notice of Procedural Safeguards: Rights of Parents of Students with Disabilities

**Effective Date: October 19, 2022**

VERMONT
AGENCY OF EDUCATION

## Resources

### Your School District's Special Education Administrator

They have information about your rights and special education services in your community. Contact your superintendent's office to find out the name and telephone number of this individual.

### State of Vermont: Agency of Education

The Rights of Parents of Students with Disabilities document provides information regarding mediation, due process or administrative complaint, and other subjects pertaining to the rights of parents of students with disabilities. Additionally, contact information may be found within this document should you have any questions or concerns.

### Forms

- Mediation form
- Due process complaint: for parents
- Due process complaint: for school districts
- Administrative complaint form

Email address for filing forms electronically: AOE.MediationDPinfo@vermont.gov

Mailing address for filing forms by mail:

Agency of Education

Special Education Mediation Service

1 National Life Drive, Davis 5

Montpelier, VT 05620-2501

### Other regional resources

Vermont Family Network

600 Blair Park, Rd Ste. 240

Williston, Vermont 05495

Phone: (802) 876-5315

Vermont Disability Law Project

264 North Winooski Avenue

Burlington, VT 05401

Phone: (800) 889-2047

## Contents

## Notice of Procedural Safeguards: Rights of Parents of Students with Disabilities

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 Agency of Education Special Education Rules (All references to the rules can be found in The Vermont State Board of Education Manual of Rules and Practices; a reference to 34 Code of Federal Regulations (CFR) Part 300 can be found in the Federal Register).

You are entitled to parental rights if you are:

- a biological or adoptive parent
- a guardian (Please note that if a child is in the custody of the Vermont Department of Children and Families (DCF), the state cannot be the child's guardian.)
- a person who is acting as a parent, such as a grandparent or step-parent with whom the child lives and who is legally responsible for the child
- a parent who has been appointed by the Vermont Educational Surrogate Parent Program according to VTSBE 2368; 34 CFR Section 300.519
- a foster parent who is appointed as an educational surrogate parent

You must receive a copy of your rights from your child's school when:

- an initial evaluation or re-evaluation of your child is being planned; or
- you or the school requests a due process hearing; or
- you file an administrative complaint; or
- upon your request; or
- at least annually

The most important special education rights entitle you to:

- be notified about important decisions regarding your child's education
- give your consent before your child is evaluated, before your child receives special education and related services, and before confidential information about your child is released
- participate in meetings about your child's evaluation, eligibility for special education, educational program, and placement
- have access to your child's education records and to have those records kept confidential
- appeal decisions with which you disagree

### Parent Input in Vermont Special Education Rules

Developing and revising a child's IEP includes parent input throughout the process, including specific input regarding their child's present levels of educational and functional performance. Parental input is included via the Parental Input Section or Page located within the IEP or as an attachment via the Parent Input Form (Form #12 or other method for collecting Parent Input) with a statement referring to the Form within the IEP document. The Parent Input Form becomes a part of the student file. Parents providing written input have the right to complete

and send to the IEP team within ten (10) days of receiving the IEP, after an IEP meeting was held to write or amend the IEP. Parent(s) will be informed to return the form (or other method for collecting Parent Input) within 10 days if they have additional feedback or input.

It is appropriate and encouraged for parents to provide verbal input during the IEP meeting, for the district to include in the written IEP. The Parental Input Page described above provides another means for parents to provide input, but this should not be interpreted as preventing verbal input from being documented. Further, parents may waive their right to provide parent input if they choose. If the parent declines or does not provide feedback, the LEA should indicate this circumstance within the Parent Input section of the IEP.

The IEP will be considered 'in place' from the date referenced as the implementation date in the Prior Written Notice. A later meeting to review input that amends the IEP, if held, would result in a new IEP and Prior Written Notice.

If a parent disagrees with the IEP Team or provides new input that necessitates further IEP Team deliberation, the LEA should convene an additional meeting if the substance of parent feedback warrants such. This will usually take the form of new information not already addressed within an IEP meeting, or concerns about the IEP process that need to be addressed. In this case the LEA will confirm receipt of the feedback and may either schedule an additional formal IEP meeting for the IEP team to consider the input provided, or a specific meeting with the case manager or the special education administrator. The LEA should grant a full IEP meeting if requested by a parent. Any amendments may be created using a form 5B, as per the typical process of amending an IEP between annual meetings.

### Parent Input in Content of IEP

Excerpt from Vermont Special Education Rule 2363.7 Content of IEP (34 C.F.R. § 300.320):

> (j) Parent Input. The IEP shall contain a section for parents to provide written comments regarding their child's IEP. Following an IEP meeting to write or amend an IEP, the LEA shall send the IEP to the parent together with prior written notice of decision. The parent shall be provided 10 days to complete and return the parent input section of the IEP. The purpose of the parent input section is to facilitate feedback from families to ensure they have an opportunity to express any opinions about the IEP or the IEP process. Upon receipt of the parent input, the LEA may, but is not required to, schedule a meeting to discuss parental concerns.

## General Information

### Prior Written Notice

#### Notice

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

1. Proposes to begin or to change the identification, evaluation, or educational placement of your child, or the provision of a free appropriate public education (FAPE) to your child; or
2. Refuses to begin or to change the identification, evaluation, or educational placement of your child or the provision of FAPE to your child; or
3. Does not complete an initial evaluation or convene an evaluation meeting within 15 days of receiving a referral; or
4. Encounters delays in completing an initial evaluation beyond 60 days, with details identifying the expected completion date

Rule 2365.1.1; 2362.2.1; 34 CFR §300.503; §300.306

#### Content of notice

The written notice must:

1. Describe the action that your school district or supervisory union proposes or refuses to take
2. Explain why your school district or supervisory union is proposing or refusing to take the action
3. Describe each evaluation procedure, assessment, record, or report your school district or supervisory union used in deciding to propose or refuse the action
4. Include a statement that you have protections under the procedural safeguards provisions in Part B of the IDEA and Vermont Special Education Rules
5. 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
6. Include resources for you to contact for help in understanding Part B of the IDEA and Vermont Special Education Rules
7. Describe any other choices that your child's individualized education program (IEP) Team considered and the reasons why those choices were rejected; and
8. 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:

1. Written in language understandable to the general public; and
2. 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:

1. The notice is translated for you orally by other means in your native language or other mode of communication
2. You understand the content of the notice; and
3. There is written evidence that 1 and 2 have been met

## Native Language

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

1. The language normally used by that person, or, in the case of a child, the language normally used by the child's parents
2. 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).

34 CFR §300.29

## Electronic Mail

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:

1. Prior written notice
2. Procedural safeguards notice; and
3. Notices related to a due process complaint

Rule 2365.1.1(h) (4); 34 CFR §300.505

## Parental Consent - Definition

*Consent* means:

1. 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.
2. 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:

3. You understand that the consent is voluntary on your part and you may withdraw your consent at any time.

Your withdrawal of consent does not negate (undo) an action that has occurred after you gave your consent and before you withdrew it.

Rule 2365.1.3; 34 CFR §300.9

## Parental Consent

See 34 CFR §300.300 for details regarding parental 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 Part B of the IDEA and Vermont Special Education Rules without first providing you with prior written notice of the proposed action and without obtaining your consent as described in the document referenced 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 determine 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, seek to conduct an initial evaluation by employing mediation, using due process, or reviewing existing data. The school district/supervisory union may 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 to which a parent failed to give consent.

### Special rules for initial evaluation of wards of the State

With respect to a child who is a ward of the State and is not living with his/her parent, the school district does not need consent from the parent for an initial evaluation to determine if the child is a child with a disability if:

1. Despite reasonable efforts to do so, the school district cannot find the child's parent.
2. The rights of the parents have been terminated in accordance with State law; or:
3. A judge has assigned the right to make educational decisions and to consent for an initial evaluation to an individual other than the parent.

*Ward of the State*, as used in the IDEA, means a child who, as determined by the State where the child lives, is:

1. A foster child
2. Considered a ward of the State under State law; or
3. In the custody of a public child welfare agency

Ward of the State does not include a foster child who has a foster parent.

### Parental consent for services

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

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 the procedural safeguards (i.e., mediation, a due process complaint, resolution meeting, or an impartial due process hearing) in order to obtain agreement or a ruling that the special education and related services (recommended by your child's IEP Team) may be provided to your child without your consent.

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:

1. 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:
2. 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, the school district or supervisory union cannot request mediation or a due process hearing.

In addition, your child will not be protected in regard to discipline under special education rules.

If you revoke consent, your child may still be protected from discrimination under Section 504 of the Rehabilitation Act of 1973 and 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

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

If you refuse to consent to your child's reevaluation, the school district or supervisory union may, but is not required to, pursue your child's reevaluation by using mediation, due process complaint, resolution meeting, and impartial due process hearing procedures to seek to override your refusal to consent to your child's reevaluation. As with initial evaluations, your school district does not violate its obligations under Part B of the IDEA if it declines to pursue the reevaluation in this manner.

### Documentation of reasonable efforts to obtain parental consent

Your school must maintain documentation of its reasonable efforts to obtain 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:

1. Detailed records of telephone calls made or attempted and the results of those calls;
2. Copies of correspondence sent to parents and any responses received; and
3. 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:

1. Review existing data as part of your child's evaluation or a reevaluation; or
2. Give your child a test or other evaluation that is given to all children unless, before that test or evaluation, consent is required from all 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 override your refusal to 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 2362.2.8; 34 CFR §300.502

### General

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 obtained 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 the school district or supervisory union's criteria that apply to IEEs.

### Definitions

*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, subject to the following conditions:

1. If you request an independent educational evaluation of your child at public expense, your school district or supervisory union must, without unnecessary delay, either: (a) File a due process complaint to request a hearing to show that its evaluation of your child is appropriate; or (b) Provide an independent educational evaluation at public expense, unless the school district or supervisory union demonstrates in a hearing that the evaluation of your child that you obtained did not meet the school district's criteria.
2. 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.
3. 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:

1. 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
2. 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

### Definitions

As used under the heading Confidentiality of Information:

- 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)).
- Participating agency 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 Part B of the IDEA and Vermont Special Education Rules.

Rule 2365.2 34; CFR §300.611

### Personally Identifiable

*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.

34 CFR §300.32

### Notice to Parents

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

1. A description of the extent to which the notice is given in the native languages of the various population groups in the State;
2. 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;
3. 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:
4. 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"), a 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.

Rule 2365.2.1; 34 CFR §300.612

### Access Rights

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 Part B of the IDEA and state special education regulations. The 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:

1. Your right to a response from your school district or supervisory union to your reasonable requests for explanations and interpretations of the records;
2. 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:
3. Your right to have your representative inspect and review the records.

The 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.

Rule 2365.2.2; 34 CFR §300.613

### Record of Access

Each school district or supervisory union must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the IDEA 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.

Rule 2365.2.3; 34 CFR §300.614

### Records on More Than One Child

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

Rule 2365.2.4 34; CFR §300.615

### List of Types and Locations of Information

Upon request, each 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.

Rule 2365.2.5 34; CFR §300.616

### Fees

Each 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.

A school district or supervisory union may not charge a fee to search for or to retrieve information under these provisions.

Rule 2365.2.6 34; CFR §300.617

### Amendment of Records at Parents' Request

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

The 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 the 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 below under the heading *Opportunity For a Hearing*.

Rule 2365.2.7 34; CFR §300.618

### Opportunity for a Hearing

The school district or supervisory union must, on 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.

Rule 2365.2.8; 34 CFR §300.619

### Hearing Procedures

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).

34 CFR §300.621

### Result of Hearing

If, as a result of the hearing, the 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, the 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 the school district or supervisory union.

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

1. 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:
2. If the 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.

Rule 2365.2.9; 34 CFR §300.620

### Consent for Disclosure of Personally Identifiable Information

With the exception of disclosures permitted to law enforcement and judicial authorities for which parental consent is not required by the Family Educational Rights and Privacy Act (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 Part B of the IDEA 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, an 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 the school district or supervisory union where the independent school is located and officials in the school district or supervisory union where you reside.

Rule 2365.2.11; 34 CFR §300.622

### Safeguards

Each 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.

Each 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 Part B of the IDEA, Rule 2365.2.12 and the Family Educational Rights and Privacy Act (FERPA).

Each 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.

Rule 2365.2.12; 34 CFR §300.623

### Destruction of Information

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.

Rule 2365.2.13; 34 CFR §300.624

## Vermont Complaint Procedures

### Difference Between Due Process Hearing Complaint and Administrative Complaint Procedures

The regulations for Part B of IDEA and 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 Part B and Vermont Special Education Rules requirement by a school district or supervisory union, the Vermont Agency 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 Secretary of the Vermont Agency of Education generally must resolve an Administrative 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

34 CFR §300.151

#### General

A written and signed Administrative Complaint must be filed with the Secretary of the Vermont Agency of Education and a copy forwarded to the school district or supervisory union or public agency serving the child.

Upon receipt of an Administrative Complaint, the Vermont Secretary of Education 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 school district, supervisory union, or other public agency. 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 will 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 school district, supervisory union, or other public agency the

opportunity to respond with a proposal to resolve the complaint, or, with your consent, an opportunity to engage 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:

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

No later than 60 days after receipt of the complaint, the Vermont Secretary of Education shall issue a written decision.

When a complaint investigation determines that there has been a violation of a federal or state requirement under IDEA, the investigation report shall address how to remediate the violation, including any resulting denial of services, including, as appropriate, corrective action appropriate to the needs of the child, as well as appropriate future provision of services for all children with disabilities.

#### Time extensions

The sixty-calendar-day time limit may be extended only if exceptional circumstances exist with respect to a particular complaint, or if the parties agree to extend the time to engage in mediation.

#### Administrative complaints and due process hearings

If a written complaint is received that is also the subject of a due process hearing as describe below under the heading Filing a Due Process Complaint, or the Administrative Complaint contains multiple issues, of which one or more are part of that hearing, the Vermont Agency of Education must set aside the administrative complaint, or any part of the administrative complaint that is being addressed in the due process hearing until the hearing is over. Any issue in the administrative complaint that is not a part of the due process hearing must 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 on that issue and the Vermont Agency of Education must inform the complainant that the decision is binding.

A complaint alleging a school district's or other public agency's failure to implement a due process hearing decision must be resolved by the Vermont Agency of Education.

### Filing an Administrative Complaint

Rule 2365.1.5 34 CFR§300.153

### General

Any person or organization may file a signed written Administrative Complaint under the procedures described above.

The Administrative Complaint must include:

1. A statement that a school district, supervisory union or other public agency has violated a requirement of Part B of the IDEA or its regulations;
2. The facts on which the statement is based;
3. The signature and contact information for the complainant; and If alleging violations against a specific child:
    a. The name and address of the residence of the child;
    b. The name of the school the child is attending;
    c. 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;
    d. A description of the nature of the problem of the child, including facts relating to the problem; and:
    e. 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 (1) year prior to the date that the complaint is received as described above under the heading *Administrative Complaint Procedures*.

### Part C complaints

An administrative complaint may also be filed regarding provisions 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 Children and Families, Child Development Division. A written complaint should be sent to the Children's Integrated Services, Child Development Division, 280 State Drive, NOB 1 North, Waterbury, Vermont 05671-1040.

## Due Process Complaint Procedures

### Filing a Due Process Complaint

34 CFR §300.507

### General

You or the 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 (2) years before the filer of the complaint knew or should have known about the alleged action that forms the basis of the due process complaint. However, if you have unilaterally placed your child in an independent school and are seeking reimbursement, the due process complaint must be filed within ninety (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:

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

#### Information for parents

The 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.

### Due Process Complaint

Rule 2365.1.6; 34 CFR §300.508

#### General

In order to request a hearing, you or the school district or supervisory union (or your attorney or the 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 the school district or supervisory union, whichever one filed the complaint, must also provide the Vermont Agency of Education with a copy of the complaint using a form provided by the Secretary.

#### Content of the complaint

The due process complaint must include:

1. The name of the child;
2. The address of the child's residence;
3. The name of the child's school;
4. If the child is a homeless child or youth, the child's contact information and the name of the child's school;
5. 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:
6. A proposed resolution of the problem to the extent known and available to you or the school district or supervisory union at the time.

### Notice required before a hearing on a due process complaint

You or the school district or supervisory union may not have a due process hearing until you or the school district or supervisory union (or your attorney or the 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 the 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 the 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 the school district or supervisory union may make changes to the complaint only if:

1. 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:
2. 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 the 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, the 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 the 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 the 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 the school district or supervisory union's proposed or refused action.

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

#### Other party response to 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.

### Model Forms

The Vermont Agency of Education has model forms to help you file a due process complaint and an administrative complaint. However, your State or the school district or supervisory union may not require you to use these model forms. In fact, you can use this form or another appropriate model form, so long as it contains the required information for filing a due process complaint or an administrative complaint.

- Due process complaint: for parents
- Due process complaint: for school districts
- Administrative complaint form

34 CFR §300.509

### Mediation

Rule 2365.1.4; 34 CFR §300.506

#### General

The school district or supervisory union must make mediation available to allow you and the school district or supervisory union to resolve disagreements involving any matter under Part B of the IDEA, including matters arising prior to the filing of a due process complaint. Thus, mediation is available to resolve disputes under Part B of the IDEA whether or not you have filed a due process complaint to request a due process hearing as described under the heading Filing a Due Process Complaint.

#### Requirements

The procedures must ensure that the mediation process:

1. Is voluntary on your part and your school district or supervisory union's part;
2. 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:
3. Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

The Vermont Agency 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 Vermont Agency 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 the school district or supervisory union.

If you and the 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:

1. 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:
2. Is signed by both you and a representative of the school district or supervisory union who has the authority to bind the 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 Part B of IDEA and Vermont Special Education Rules.

Written requests for mediation shall be submitted using the Dispute Resolution Request for Mediation Form, to the Vermont Agency of Education, Special Education Mediation Service, 1 National Life Drive, Davis 5, Montpelier, VT 05620-2501.

Upon receipt of such request, Agency staff 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 Vermont Secretary of Education 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:

1. May not be an employee of the Vermont Agency of Education or the school district or supervisory union that is involved in the education or care of your child; and:
2. 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 Agency of Education solely because he or she is paid by the Agency, or school district or supervisory union to serve as a mediator.

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

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 the 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 the school district or supervisory union and you.

If the due process complaint involves an application for initial services under Part B of the IDEA and Vermont Special Education Rules for a child who is transitioning from being served under Part C of the IDEA to Part B of the IDEA and Vermont Special Education Rules and who is no longer eligible for Part C services because the child has turned three, the 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 Part B of the 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, the 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).

Rule 2365.1.11; 34 CFR §300.518

### Resolution Process

Rule 2365.1.6.8; 34 CFR §300.510

#### Resolution meeting

Within 15 calendar days of receiving notice of your due process complaint, and before the due process hearing begins, the 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:

1. Must include a representative of your school district or supervisory union who has decision-making authority on behalf of the school district or supervisory union; and:
2. May not include an attorney of the school district or supervisory union unless you are accompanied by an attorney.

You and the 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 the school district or supervisory union has the opportunity to resolve the dispute.

The resolution meeting is not necessary if:

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

### Resolution period

If the 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 the 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, the school district or supervisory union is not able to obtain your participation in the resolution meeting, the 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 the school district or supervisory union's attempts to arrange a mutually agreed upon time and place, such as:

1. 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:
2. Detailed records of visits made to your home or place of employment and the results of those visits.

If the 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 the 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 the 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 the 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 the 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 the school district or supervisory union must enter into a legally binding agreement that is:

1. 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:
2. 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 the school district or supervisory union enter into an agreement as a result of a resolution meeting, either party (you or the school district or supervisory union) may void the agreement within three 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

Whenever a due process complaint is filed, you or the 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 Agency of Education is responsible for convening due process hearings.

34 CFR §300.511

### Impartial Hearing Officer

At a minimum, a hearing officer:

1. Must not be an employee of the Vermont Agency of Education or the school district or supervisory union that is directly involved in the education or care of the child.

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;
2. Must not have a personal or professional interest that conflicts with the hearing officer's objectivity in the hearing;
3. Must be a licensed attorney;
4. 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:
5. Must have the knowledge and ability to conduct hearings, and to make and write decisions, consistent with appropriate, standard legal practice.

The Vermont Agency 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.

Rule 2365.1.7

#### Subject matter of due process hearing

The party (you or the 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 the school district or supervisory union must request an impartial hearing on a due process complaint within two (2) years of the date you or the school district or supervisory union knew or should have known about the issue addressed in the complaint. If you are seeking reimbursement for the costs of a unilateral special education placement, you must file your due process complaint within ninety (90) days of the unilateral placement.

#### Exceptions to the timeline

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

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

### Hearing Rights

Rule 2365.1.6.15; 34 CFR §300.512

#### General

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

1. Be accompanied and advised by a lawyer and/or persons with special knowledge or training regarding the problems of children with disabilities;
2. 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;
3. Obtain a written, or, at your option, electronic, word-for-word record of the hearing; and:
4. 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 the 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 the 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

Parents involved with hearings have the right to:

1. Have your child present;
2. Open the hearing to the public; and:
3. Have the record of the hearing, the findings of fact and decisions provided at no cost to parents.

## Hearing Decisions

### Decision of Hearing Officer

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:

1. Interfered with your child's right to a free appropriate public education (FAPE);
2. 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:
3. Caused a deprivation of an educational benefit.

Rule 2365.1.6.16(c); 34 CFR §300.513

#### Construction clause

None of the provisions described above can be interpreted to prevent a hearing officer from ordering a school district or supervisory union to comply with Vermont State Rule 2365.1 through 2365.2.15 and 4313.1 through 4313.7 and the procedural safeguards section of the Federal regulations under Part B of the IDEA (34 CFR §§300.500 through 300.536).

#### Separate request for a due process hearing

Nothing in the procedural safeguards section of the Federal regulations under Part B of the IDEA (34 CFR §§300.500 through 300.536) can be interpreted to prevent you from filing a separate due process complaint on an issue separate from a due process complaint already filed.

#### Findings and decision to advisory panel and general public

The Vermont Agency of Education or the school district or supervisory union, (whichever was responsible for your hearing) after deleting any personally identifiable information, must:

1. Transmit the findings and decisions to the Vermont Special Education Advisory Council; and:
2. Make those findings and decisions available to the public.

## Appeals

### Finality of Decision; Appeal; Impartial Review

Rule 2365.1.8 34; CFR §300.514

#### 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 the school district or supervisory union) may bring a civil action, as described below.

### Timelines and Convenience of Hearings and Reviews

The Vermont Agency 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, that:

1. A final decision is reached in the hearing; and:
2. 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:

1. The child's educational progress or well-being would not be jeopardized by the delay;

2. 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:
3. 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 and each review involving oral argument must be conducted at a time and place that is reasonably convenient to you and your child.

Rule 2365.1.6.16 (a) and (b); 34 CFR §300.515

## Civil Actions, Including the Time Period in Which to File Those Actions

Rule 2365.1.9; 34 CFR §300.516

### General

Any party (you or the 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 the 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:

1. Receives the records of the administrative proceedings.
2. Hears additional evidence at your request or at your school district or supervisory union's request; and:
3. 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 Part B of the IDEA and Vermont Special Education Rules without regard to the amount in dispute.

### Rule of construction

Nothing in Part B of the 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 Part B of the 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 Part B of 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; 34 CFR §300.517

### General

In any action or proceeding brought under Part B of the 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 Part B of the 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 Agency of Education or school district or supervisory union, to be paid by your attorney, if the attorney: (a) filed a complaint or court case that the court finds is frivolous, unreasonable, or without foundation; or (b) continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation.

In any action or proceeding brought under Part B of the 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 Agency 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:

1. 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.
2. Fees may not be awarded and related costs may not be reimbursed in any action or proceeding under Part B of the IDEA and Vermont Special Education Rules for services performed after a written offer of settlement to you if:
    a. 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;

b. The offer is not accepted within 10 calendar days; and:
c. 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.

3. 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 reduces, as appropriate, the amount of the attorneys' fees awarded under Part B of the IDEA and Vermont Special Education Rules, if the court finds that:

1. You, or your attorney, during the course of the action or proceeding, unreasonably delayed the final resolution of the dispute;
2. 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;
3. The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or:
4. 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 Part B of the IDEA and Vermont Special Education Rules.

## Procedures When Disciplining Children With Disabilities

### Authority of School Personnel

Rule 4313.1; 34 CFR §300.530

#### 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

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 suspended the child. School personnel may also impose additional removals of the child of not more than ten 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:

1. 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:
2. 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), the school district or supervisory union, the parent, and relevant members of the IEP Team (as determined by the parent and the 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:

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

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

1. Conduct a functional behavioral assessment, unless the 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

2. 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:

1. 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 Agency of Education or a school district or supervisory union;
2. 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 Agency of Education or a school district or supervisory union; or:
3. 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 Agency 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, the school district or supervisory union must notify the parents of that decision, and provide the parents with a procedural safeguards notice.

### Change of Placement Because of Disciplinary Removals

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

1. The removal is for more than 10 school days in a row; or:
2. The child has been subjected to a series of removals that constitute a pattern because:
    a. The series of removals total more than 10 school days in a school year;
    b. The child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals;
    c. 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:
    d. Whether a pattern of removals constitutes a change of placement is determined on a case-by-case basis by the school district or supervisory union and, if challenged, is subject to review through due process and judicial proceedings.

Rule 4313.7 34; CFR §300.536

### Determination of Setting

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

Rule 4313.2 34; CFR § 300.531

### Appeal

Rule 4313.3; 34 CFR § 300.532

#### General

The parent of a child with a disability may file a due process complaint (see above) to request a due process hearing if he or she disagrees with:

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

The 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:

1. 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:
2. 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 the 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.

Whenever a parent or a school district or supervisory union files a due process complaint to request an expedited hearing, a hearing must be held that meets the requirements described under the headings *Due Process Complaint Procedures, Hearings on Due Process Complaints*, except as follows:

1. If a parent disagrees with an interim or alternative placement, or a LEA believes the current placement is substantially likely to result in injury to the child or another person, the Vermont Agency 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.
2. Unless the parents and the 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

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

Rule 4313.4; 34 CFR §300.533

### Protections For Children Not Yet Eligible For Special Education and Related Services

Rule 4313.5; 34 CFR §300.534

### General

If a child has not been determined eligible for special education and related services and violates a code of student conduct, but the 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:

1. The parent 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;
2. The parent requested an evaluation related to eligibility for special education and related services under Part B of the IDEA and Vermont Special Education Rules; or:
3. 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 the school district or supervisory union.

### Exception

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

1. The child's parent has not allowed an evaluation of the child or refused special education services; or:
2. The child has been evaluated and determined to not be a child with a disability under Part B of the 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 and Exception 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 the parent, the school district or supervisory union must provide special education and related services in accordance with Part B of the IDEA and Vermont Special Education Rules, including the disciplinary requirements described above.

### Referral To and Action By Law Enforcement and Judicial Authorities

Part B of the IDEA does not:

1. Prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities; or:
2. Prevent 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.

Rule 4313.6; 34 CFR §300.535

#### 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:

1. 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:
2. 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 Unilateral Placement By Parents of Children In Independent Schools At Public Expense

### General

Part B of the 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 the 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 addressed under the Part B provisions and Vermont Special Education Rules regarding children who have been placed by their parents in an independent school under 34 CFR §§300.131 through 300.144.

Rule 2368.1.4; 34 CFR §300.148

### 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 the 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 school 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 the school district or supervisory union.

### Limitation on reimbursement

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

1. (a) 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, and did not state your concerns and your intent to enroll your child in an independent school at public expense; or (b) 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;
2. If, 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
3. A court found that your actions were unreasonable.

However, the cost of reimbursement:

1. Must not be reduced or denied for failure to provide the notice if: (a) The school prevented you from providing the notice; (b) You had not received notice of your responsibility to provide the notice described above (receipt of these procedural safeguards); or (c) Compliance with the requirements above would likely result in physical harm to your child; and:
2. A court or a hearing officer, may exercise its discretion not to reduce or deny reimbursement on account of failure to provide the required notice if: (a) The parent is not literate or cannot write in English; or (b) Compliance with the above requirement would likely result in serious emotional harm to the child.