

~~2366~~ **State Funding for Special Education**

~~2366.1~~ **Special Education Service Plan**

- (a) ~~On or before October 15th of each year, each superintendent shall file a Special Education Service Plan with the Secretary of Education, as required by 16 V.S.A. §2964.~~
- (b) ~~The special education service plan shall be submitted in a form and manner prescribed by the Secretary, and at minimum, shall contain the following:~~
- ~~(1) Anticipated services to be provided to students with disabilities which will be made available by the LEA;~~
 - ~~(2) Anticipated extraordinary special education expenditures in the next fiscal year; and~~
 - ~~(3) Anticipated total special education expenditures in the next fiscal year for each LEA and member districts.~~

~~2366.2~~ **Allowable Special Education Expenditures for State Formula Reimbursement**

~~These rules define expenditures eligible for state reimbursement for special education provided to an LEA's kindergarten through 12th grade resident students and for the extraordinary cost for essential early education students under the following funding provisions:~~

- (a) ~~Mainstream Block Grant and matching funds pursuant to 16 V.S.A. §2961;~~
- (b) ~~Extraordinary Services Reimbursement and the matching local funds pursuant to 16 V.S.A. §2962; and~~
- (c) ~~Special Education Expenditures Reimbursement pursuant to 16 V.S.A. §2963.~~

~~The cost of providing special education services for Vermont state placed students that is not covered by State Placed Student reimbursement pursuant to 16 V.S.A. §2950(a) can be claimed as long as the cost is an eligible cost based on the following definitions:~~

~~2366.2.1~~ **Instructional Services**

~~Except as provided under (1) and (2) in (a) below, expenditures for instructional services shall be allowable if required by a student's IEP. The allowable special education costs include:~~

Commented [CJ224]: Generally, Rule 2366 and subsections will be replaced by the proposed Special Education Finance and Census-based Funding Rules. Subsections will be addressed specifically.

Commented [CJ225]: Rule deleted - Service plans will no longer be necessary under the census-based funding model. Reporting requirements will be addressed in the proposed Special Education Finance and Census-based Funding Rules.

Commented [CJ226]: Rule deleted - new allowable cost rule will be proposed in the Special Education Finance and Census-based Funding Rules.

- ~~(a) Salaries and benefits of licensed special education teachers including vocational special needs teachers, and instructional aides for the time they carry out special education responsibilities.
 - ~~(1) The allowable cost that an LEA may claim includes a school period or service block during which the above staff member is providing special education services as defined in Rule 2360.2.12 to a group of eight or fewer students, and the majority of the students are receiving the special education services, in accordance with their IEPs.~~
 - ~~(2) In addition to the time for carrying out special education responsibilities, an LEA may claim up to 20% of an above special education staff member's time, if that the staff spends the additional time performing consultation to assist with the development of and providing instructional services required by:
 - ~~(i) A plan pursuant to Section 504 of the Rehabilitation Act; or~~
 - ~~(ii) A plan for students who require additional assistance in order to succeed in the general education environment as determined by the Educational Support Team;~~~~~~
- ~~(b) Salaries and benefits for services of individual aides for the portion of time they carry out special education responsibilities;~~
- ~~(c) Contracted services to provide special education instruction to students with disabilities;~~
- ~~(d) Student transportation which is required to implement a part of the instructional program for students with disabilities;~~
- ~~(e) The portion of non-collaborative tuition of special education programs and excess costs charged by public schools which relate to allowable costs;~~
- ~~(f) The collaborative tuition for special education programs charged by public LEAs;~~
- ~~(g) Tuition and all reasonable and necessary costs of placement, as defined in Rule 2366.2.5, excluding any general education tuition in an independent school approved for the purpose of providing special education in accordance with 16 V.S.A. §2958(e) and Rule 2228, et seq.;~~
- ~~(h) Travel of special education personnel relating to educating students with disabilities as allowed by their local contractual agreement;~~
- ~~(i) Special textbooks, workbooks, other classroom supplies and other instructional materials for a student with disabilities to the extent required by a student's IEP; and~~

- ~~(j) The reasonable cost of rental, purchase and maintenance of specialized equipment for a student with disabilities required by the IEP and not otherwise available at no cost to the parent through any other sources.~~

~~2366.2.2~~ **Related Services**

~~Expenditures for related services are allowable if:~~

- ~~(1) They are for services defined as related services in federal and state law;~~
- ~~(2) The expenditure is for a related service required by the student's IEP, including transportation to and from home for students with disabilities who cannot be accommodated by general school bus service;~~
- ~~(3) The expenditure is for services provided by personnel beyond those required by the non-special education School Quality Standards (e.g. counseling, nursing); and~~
- ~~(4) The expenditure is not reimbursed by another source.~~

~~2366.2.3~~ **Special Education Administration**

~~Allowable expenditures for special education administration are as follows:~~

- ~~(1) Salary and benefits of special education administrators and support staff for time dedicated to administration of the educational program for students with disabilities. However, if an LEA elects not to hire a special education administrator and is implementing an alternative organizational plan for the provision of special education administration for a given school year, in order for the cost to be considered an allowable expenditure, the plan shall be approved by the Agency of Education. The plan shall include a description of the functions and the responsibilities of the staff assigned to special education administration; the time spent on these functions; and the estimated costs to be allocated to special education administration;~~
- ~~(2) Supplies, office expenses and equipment for special education administration;~~
- ~~(3) Cost of in-service activities relating to special education up to a maximum amount per year established by the Secretary;~~
- ~~(4) Expense of a telephone in a special education classroom; and~~

~~(5) Advertising expenses in an amount not to exceed \$3,000 annually per LEA.~~

~~2366.2.4 Evaluation Costs~~

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

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~~2366.2.5 Costs of Placement in Approved Independent Schools~~

~~(a) Subject to (b), reasonable and necessary costs, required by a student's IEP, excluding general education tuition, of a placement in an independent school are allowable if either:~~

- ~~(1) The independent school is approved by the State Board of Education for purposes of providing special education pursuant to Rule 2228 for the category of disability under which the student was determined to be eligible for special education and has been reviewed and received reimbursement approval through the residential review process;~~
- ~~(2) The student's placement has been recommended for reimbursement either through the residential review process or as an exception by the Secretary pursuant to Rule 2228.2.(2) of a high cost day or residential placement; or~~
- ~~(3) The student's placement is required by a due process hearing order issued following a hearing on the merits or a court order.~~

Commented [CJ227]: Rule deleted – should be considered during process for revising independent school rules.

~~(b) Costs approved by the State Board of Education at an independent school are only allowable if covered by a written agreement pursuant to Rule 2228.4.1 and at a rate approved under Rule 2228.8 or for an out-of-state placement, the rates approved under that state's approval system.~~

~~(c) If the costs relating to a student's attendance at an independent school or program are pursuant to a legally binding settlement agreement, the parties shall, at a minimum, make reference in the IEP to the settlement agreement as the means by which the parties have agreed to resolve placement differences. The agreement shall provide for annual review by the parties of any resolution of placement issues.~~

~~2366.2.6~~ **Unallowable Expenditures**

~~The following are not allowable for reimbursement under the State of Vermont special education funding formula:~~

- ~~(1) Attorney's fees and other legal costs;~~
- ~~(2) Overhead costs including building operations, general administration, and business services except that are part of a collaborative tuition attributable to overhead costs, and then only to the extent that overhead costs do not exceed 20% of the total program costs;~~
- ~~(3) Funds paid to union schools or supervisory unions by member school districts as assessments for special education;~~
- ~~(4) Any costs not allowable under Rules 2366.2.1 through 2366.6;~~
- ~~(5) Any costs for financial accounting and auditing; and~~
- ~~(6) Technical Education tuition established under 16 V.S.A. §1552(a);~~
- ~~(7) Any costs related to the provision of special education to a student that has reached age 22 unless the Secretary has granted an extension under 16 V.S.A. §2944(e) and~~
- ~~(8) Any costs related to parentally placed independent school students in excess of the proportionate share required by the IDEA except if pursuant to a hearing officer order reached on the merits or a court order.~~

~~2366.2.7~~ **Transition from Residential Placement**

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

- ~~(1) A plan for transitional and educational services shall be submitted to the Secretary of Education within a reasonable time prior to the change in placement and shall contain a description of the services to be provided and the estimated costs of those services. The contents of the plan shall be consistent with those prescribed by the Secretary. The plan for transitional services, including estimated costs, shall receive approval from the Secretary in order for reimbursement of the otherwise non-allowable costs to occur.~~

Commented [CJ228]: Rule deleted – specific guidance on allowable and unallowable costs will be included in the Vermont Schools Uniform Chart of Accounts and the Allowable Costs for Vermont State Special Education Funding and IDEA B Entitlement Grants guidance document.

Commented [CJ229]: Rule deleted – not consistent with current practice.

~~(2) The Secretary's approval of a plan for transitional and educational services shall specify the limit as to the amount that will be reimbursed and the period during which such reimbursement will be made.~~

~~2366.2.8 Special Education Administration Costs~~

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

Commented [CJ230]: Rule deleted – replaced in proposed Special Ed. Finance and Census-based Funding Rules.

~~2366.3 Special Education Expenditures Defined~~

~~“Special education expenditures” under 16 V.S.A. §2963 shall mean a sum of money equaling all allowable expenditures for special education as defined under Rule 2366.2 less the following:~~

Commented [CJ231]: Rule deleted – statutory provision for this rule will be repealed effective July 1, 2020.

- ~~(1) Revenue from federal aid for special education.~~
- ~~(2) Mainstream service costs, as defined in 16 V.S.A. §2961(e)(1);~~
- ~~(3) Extraordinary special education expenditures, as defined in 16 V.S.A. §2962;~~
- ~~(4) Revenue from excess costs and special education tuitions received;~~
- ~~(5) All other state and federal funds used for special education costs. In this section, the term “other state funds” shall mean any state grant source except mainstream block grant, extraordinary services reimbursement, and special education expenditures reimbursement to which allowable special education expenditures are charged. The other state funds may include, but are not limited to the following:
 - ~~(a) Regional interdisciplinary team grants pursuant to 16 V.S.A. §2967(b)(3);~~
 - ~~(b) Regional multi-handicapped specialist grants pursuant to 16 V.S.A. §2967(b)(4);~~
 - ~~(c) Grants for building effective strategies for teaching students (BEST) pursuant to 16 V.S.A. §2969(e);~~
 - ~~(d) Training grants pursuant to 16 V.S.A. §2969(d), and~~
 - ~~(e) LEA reimbursement for state-placed students under 16 V.S.A. §2950(a).~~~~

~~2366.4 Financial Expenditure Report~~

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

~~2366.4.1 Appealing Late Fee Penalties~~

~~An LEA may appeal the late fee to the Secretary of Education. The appeal shall be received within 30 days of the due date of the report. The appeal shall be in writing and include:~~

- ~~(1) A statement of the reasons why the LEA was unable to file the complete report by the statutory deadline and~~
- ~~(2) The action to be taken by the LEA to ensure that future reports will be completed and filed by the due date.~~

~~2366.4.2 Filing an Appeal of Penalties~~

~~The appeal shall only be granted if the report is filed by the time of the appeal.~~

~~2366.4.3 Appeal Decision~~

~~The Secretary shall either grant the appeal of the penalty in whole or in part or deny the appeal in writing within 60 days of the due date of the report. The Secretary shall not grant an appeal of a late filing fee for the same LEA for two consecutive fiscal years.~~

~~2366.4.4 Unforgiven Penalties~~

~~Any late penalty not forgiven on appeal shall be deducted from any payments due under any funding category covered under Title 16 of the Vermont Statutes Annotated. The penalty incurred by an LEA shall be divided among its member town(s). The proration of the penalty shall depend on which reporting entities within the LEA failed to submit final reports by the due date. If two or more reporting entities failed to meet the deadline, the penalty shall be divided equally among the late reporting entities. The~~

Commented [CJ232]: Rule deleted – statutory provision/requirements for this rule will be repealed effective July 1, 2020. Any new financial reporting requirements will be addressed in the proposed Special Education Finance and Census-based Funding Rules.

~~penalty due to late reports from LEAs, joint contract districts and union schools shall be divided to the member towns by the same proportion that the total net cost is divided to the member towns. Any penalty attributed to the member towns of a unified union school district shall be assessed against the unified union school district.~~

~~2366.5 – Corrections Education~~

~~With respect to students in the custody of the Department of Corrections, the Secretary of education shall pay for the costs of special education in accordance with the provisions of 28 V.S.A. §120.~~

Commented [CJ233]: Rule deleted for the following reasons:

- 1) Appears rule is rarely, if ever, used;
- 2) If necessary, provisions are already in statute;
- 3) not clear that 28 V.S.A. § 120 requires payment by the Secretary – Corrections Education Programs are treated as independent schools;
- 4) Corrections has its own education budget.

~~2366.6 – Collaborative Programs~~

~~2366.6.1 – Collaborative Program Definition; Tuition~~

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

Commented [CJ234]: Collaborative Programs rules 2366.6.1-2366.6.7 deleted – replaced in proposed Special Ed. Finance and Census-based Funding Rules and revised as necessary for consistency with the census-based funding model.

~~2366.6.2 – Collaborative Program Accounting~~

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

- ~~(a) An enterprise fund as defined in the Handbook shall be established to account for the funds for each collaborative program;~~
- ~~(b) Notice of tuition shall be provided by the collaborative program to the appropriate school board(s) as set forth in 16 V.S.A. §826(a);~~
- ~~(c) Such tuition notice shall include a description of services to be provided, and the amount of the tuition for each component program;~~
- ~~(d) Tuition shall be proportionately calculated for students who are part time; and~~

~~(e) Final tuition charged shall be calculated based on the actual cost of the program.~~

~~**2366.6.3 — Non-collaborative Tuition**~~

~~(a) An LEA may charge a special education tuition under 16 V.S.A. §826(b) for providing special education services. However, any such bill for tuition shall state the amount of the bill eligible for reimbursement under the state special education funding formula. In the case of a school district, special education tuition shall not be charged for a student whose district of residence is the school district. In the case of a supervisory union, special education tuition shall not be charged for a student from within the supervisory union unless otherwise agreed pursuant to 16 V.S.A. §301.~~

~~(b) All the provisions of Rule 2366.6.2 apply to tuition under subsection (a) above, except that:~~

- ~~(1) It is permissible but not required that an enterprise fund be established and~~
- ~~(2) The notice of tuition establishes the maximum tuition which can be charged.~~

~~**2366.6.4 — Excess Costs Procedure**~~

~~Excess costs which may be charged under 16 V.S.A. §826(c) are limited to allowable special education costs for services not covered by a general education tuition or a special education tuition. Allowable special education costs for this purpose are defined in Rules §2366.2.1, 2366.2.2 and 2366.2.4. The following procedures shall apply to excess costs:~~

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

~~2366.6.5~~ — ~~Allowable Costs Reporting~~

~~For financial and statistical reporting to the Secretary, the cost reported by an LEA for all allowable special education services shall be the actual cost of services provided minus the revenue received or due for excess costs.~~

~~2366.6.6~~ — ~~(Reserved)~~

~~2366.6.7~~ — ~~Allocation of Attorney's Fees~~

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

~~2366.6.8~~ — ~~Schedule of Special Education Payment and Reporting~~

~~Payments due under 16 V.S.A. §§2961 through 2963, shall be calculated and distributed pursuant to 16 V.S.A. §2969 as follows during each fiscal year:~~

- ~~(1) Mainstream Block Grants, pursuant to 16 V.S.A. §2961, shall be distributed on August 15th and December 15th. On each of these dates one half of the state grant amount shall be forwarded.~~
- ~~(2) Special Education Expenditures Reimbursement payments shall be made, pursuant to 16 V.S.A. §2969, on the following schedule and in the amounts as indicated below:
 - ~~(a) By August 15th, 15% of the estimated reimbursement shall be forwarded. The amount shall be based on the recipient's Service Plan pursuant to 16 V.S.A. §2964.~~
 - ~~(b) By December 15th, an additional 35% of the estimated reimbursement shall be forwarded. The amount shall be based on the recipient's Service Plan, pursuant to 16 V.S.A. §2964, and adjusted according to the Special Education Expenditure Report, due on November 15th, pursuant to 16 V.S.A. §2968.~~~~

Commented [CJ235]: Collaborative Programs rule 2366.6.8 deleted – not consistent with census-based funding model.

~~(c) By April 15th, an additional 40% of the reimbursement shall be forwarded, based on the recipient's Service Plan, pursuant to 16 V.S.A. §2964, and adjusted according to the second Special Education Expenditure Report, due March 15th, pursuant to 16 V.S.A. §2968.~~

~~(d) After the close of the fiscal year, the final balance of the reimbursement shall be forwarded, based on the recipient's final Special Education Expenditure Report due on August 1st, pursuant to 16 V.S.A. §2968.~~

~~(3) Extraordinary Services Reimbursement, pursuant to 16 V.S.A. §2962, shall be calculated as the amount due based on the recipient's previous Special Education Expenditure Report, pursuant to 16 V.S.A. §2968. Funds may be advanced in June based on estimated reports of extraordinary service costs.~~

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

~~2366.7.1 "State-placed Student" is defined in 16 V.S.A. §11(a)(28).~~

~~2366.7.2 LEA reimbursement for special education costs~~

~~(1) For the costs of educating a state-placed student, the LEA serving the child shall claim and the Secretary shall reimburse the allowable special education costs, other than costs for mainstream services pursuant to 16 V.S.A. §2950(a).~~

~~(2) For the purposes of this section, mainstream services means: consulting teacher services, special educator services, speech language pathology services, and special education administration as defined by Rule 2366.2.3. For the purposes of this section, the following definitions shall apply:~~

~~(a) "Consulting teacher services" means those services provided by a consulting teacher and include direct instruction or direct supervision of services provided by an aide, in accordance with the kind and amount of such services specified in the student's IEP.~~

~~(b) "Special educator services" means those services provided by special educator, intensive special education teacher, teacher of the blind and visually impaired, teacher of the deaf~~

Commented [CJ236]: Rule deleted – replaced in proposed Special Ed. Finance and Census-based Funding Rules and revised as necessary for consistency with the census-based funding model. Current rule contradicts with statute (16 V.S.A. § 2950) with respect to reimbursement for mainstream services.

~~and hard of hearing or early childhood special educator, and include direct instruction in accordance with the kind and amount of such services specified in the student's IEP.~~

~~(c) "Speech Language Pathology Services" means those services provided by a Speech Language Pathologist and include direct instruction or direct supervision of services provided by an aide or licensed teacher in accordance with the kind and amount of such services specified in the student's IEP.~~

~~(3) Allowable special education costs for elementary and secondary students are as defined under Rule 2366.2, except that the ineligible portion of a non-collaborative tuition for a special education program is allowable under this section. For EEE children, allowable special education costs are the costs of providing the services specified in the student's IEP. Special education costs funded through federal funds or any grant, are not eligible for state-placed student reimbursement.~~

~~2366.7.3 — Payments for State-Placed Students in Residential Placements and Out-of-State Public Schools.~~

~~Payments for state-placed students in residential placements and out-of-state public schools shall be in accordance with 16 V.S.A. §2950(a) & (b).~~

Commented [CJ237]: Rule deleted – replaced in proposed Special Ed. Finance and Census-based Funding Rules.

~~2366.8 — State Funding for Essential Early Education~~

~~2366.8.1 — Essential Early Education programs shall be funded in accordance with 16 V.S.A. §2948(c) and extraordinary costs allowable pursuant to 16 V.S.A. §2962 and Rule 2366.2(b).~~

~~2366.8.2 — Essential Early Education Grant Funds~~

~~(a) Each LEA shall receive an Essential Early Education grant each year. Grants shall be calculated according to the estimated number of children from 3 through 5 years of age in the LEA. The estimated number of children who are 3 through 5 years of age shall be based on the last verified average daily membership of all children enrolled within the LEA in grades 1~~

Commented [CJ238]: Rule deleted – replaced in proposed Special Ed. Finance and Census-based Funding Rules and revised as necessary for consistency with the census-based funding model.

~~through 3. The Secretary shall announce the estimated number of children three through five years of age in each LEA and the proposed grant allocation amounts by December 15th.~~

~~(b) Essential Early Education grant funds shall be used to provide a free, appropriate, public education to all children within the LEA who are three through five years of age and are eligible for special education.~~

~~(c) Once an LEA has fulfilled its obligations under subsection (b)(1) of this rule, Essential Early Education grant funds may be used:~~

~~(1) To provide child find activities as specified to determine eligibility of a child who is younger than three years of age; or~~

~~(2) To provide services to children who are younger than six years of age who have been identified as being at risk of school failure.~~

~~(d) Extraordinary services reimbursement will be available for services which are required by an IEP for a child who is 3 through 5 years of age or who will be three years of age before the end of the school year.~~

~~(e) As a condition for receiving Essential Early Education grant funds, an LEA shall make reasonable efforts to coordinate services with local public and private agencies that provide services to children of three through five years of age.~~

~~2366.9 Residential Placements~~

~~2366.9.1 State-Operated Residential Schools and Day Programs~~

~~Funding for state-operated residential schools and day programs shall be in accordance with 16 V.S.A. §2948(f).~~

~~2366.9.2 Individual Residential Placements~~

~~Funding of individual residential placements shall be in accordance with 16 V.S.A. Chapter 101, subchapter 2 and 16 V.S.A. §2958(e)(2). Applications for funding of individual residential placements shall undergo the residential review process set forth in 16 V.S.A. §2958 and Rule 2366.9.2.~~

Commented [CJ239]: Residential Placement rule transferred from current funding section of the rules to Rule 2364 (Least Restrictive Environment). The Rule primarily addresses placement issues, not funding issues, therefore it seems to fit more consistently with the other placement rules as opposed to the proposed Special Ed. Finance and Census-based Funding Rules.

Commented [CJ240]: Rule does not appear necessary, as Agency personnel are not aware of any state operated residential schools in existence. Also, rule simply refers to law that is already in statute.

~~2366.9.2.1 — Residential Placement Review Team~~

~~As needed, the Secretary may appoint Agency of Education employees and others to a residential placement review team. Members of the team shall be subject to the confidentiality provisions of state and federal law. The team shall have those responsibilities set forth in 16 V.S.A. §2958(b). The team shall be composed of at least two members: (1) one who has knowledge about the child's area of disability and (2) the other who has knowledge of available resources and services in the LEA's region of the state, and, where relevant to the provision of a continuum addressing the student's disability, elsewhere in the State and in their region of the United States.~~

~~2366.9.2.2 — Early Notification to the Secretary~~

~~(a) Each LEA shall provide timely notification to the Secretary, in writing, with a copy sent to the student's parents, that residential placement is being considered as a possible option for inclusion in the student's IEP when there has been:~~

- ~~(1) A recommendation by the Evaluation and Planning Team for residential placement;~~
- ~~(2) A unilateral residential placement by the parents or by another state agency, pursuant to 16 V.S.A. §2942(7);~~
- ~~(3) An annual review for a student already in residential placement; or~~
- ~~(4) When any circumstance warrants consideration by the LEA that residential placement is a possible option for inclusion in a student's IEP.~~

~~Nothing herein shall be construed to mean that a student who falls within one of the above four categories necessarily requires residential placement. Additionally, nothing herein shall be construed to mean that notice to the Secretary represents a decision of the IEP participants.~~

~~(b) Reimbursement for residential placements shall be for placements from the date the Agency receives the notification in accord with this section. This requirement shall not apply to emergency placements made due to life-threatening events to a child or to other exceptional circumstances approved by the Secretary or designee after request by an LEA and recommendation of the residential review team.~~

~~2366.9.2.3 — Timelines~~

~~Unless extraordinary circumstances are presented, each LEA shall notify the Secretary at least 30 days prior to a change of placement to a residential placement, or other program, or 30 days prior to the IEP meeting where continuation at a residential placement or program is being considered. Such notice shall be given as soon as possible so that the involvement of the review team, if deemed necessary by the Secretary, does not interfere with the timelines for the placement decision.~~

~~2366.9.2.4 — Receipt of IEP~~

~~Prior to an IEP team's determination that a student requires residential placement, the LEA shall forward the following documents to the Secretary:~~

- ~~(1) The student's most recent Evaluation Plan and Report;~~
- ~~(2) Current IEP;~~
- ~~(3) Residential placement application form; and~~
- ~~(4) Any other relevant information.~~

~~2366.9.2.5 — Residential Review Team Procedures~~

- ~~(1) Upon receiving notice under Rule 2366.9.2.2 or the IEP under Rule 2366.9.2.4, or upon request by a parent to establish a residential placement review team to review his or her child's case, whichever comes earlier, the Secretary may establish a review team. Within ten working days of receipt of the notice, the IEP or the parental request, the Secretary or his designee shall notify the LEA and the parents whether or not a review team has been constituted or reconvened.~~
- ~~(2) The review team or any designated member thereof shall promptly investigate the need for residential placement of a student and provide technical assistance to the LEA concerning the need for residential placement, alternatives to residential placement, and alternative cost-effective residential facilities.~~

- ~~(3) Within 30 days, or less, of its establishment, the team, after investigation, may take any of the following actions, depending on the circumstances associated with the request for residential placement:~~
- ~~(a) Advise the LEA and parents on alternatives to residential placement;~~
 - ~~(b) Review the individualized education program calling for residential placement of a student to consider whether the student can be educated in a less restrictive environment;~~
 - ~~(c) Assist the LEA in locating cost effective and appropriate residential facilities where necessary;~~
 - ~~(d) Request, but not require, a new individualized education program when it believes that appropriate alternatives to residential placement are available; or~~
 - ~~(e) Offer mediation as a means of resolving disputes relating to the need for residential placement, the particular residential facility recommended for a student with a disability or the associated costs;~~
 - ~~(f) The residential review team shall provide notice in writing to the LEA's IEP team if and when it determines, as a result of its review, that residential placement, or that a particular residential placement, is not appropriate. The notice shall set forth the reasons(s) for the team's conclusions.~~
- ~~(4) The Secretary may waive any provision of Rule 2366.9.2.5, not otherwise inconsistent with law for emergency placements or administrative efficiency.~~
- ~~(4) Where the team or its designee finds that the placement practices or policies of an LEA are substantially inconsistent with least restrictive environment provisions of state or federal law, it may require the agency to submit a plan of correction.~~
- ~~(5) Where the residential review team has identified, with the timelines noted above, residential facilities or alternative educational programs that are available, appropriate and less costly, and has presented such facilities or programs to the IEP team for consideration during the IEP team's consideration of placement alternatives, and the IEP team has chosen to place the child in a more costly residential facility or program, the amount of reimbursement by the State to the LEA shall be based upon the less costly placement. In such an instance, the LEA may appeal the decision of the Secretary to the State Board of Education in accordance with Rule 4230.~~

~~(7) Where the recommendation of the residential review team to IEP team is for a residential program or facility operated or developed by, or funded directly or indirectly through, another State agency, it shall be the responsibility of the residential review team, the LEA and the IEP team to work with the State agency in a timely manner and in accordance with the Part B Interagency Agreement, as amended.~~

~~(8) If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, shall be at no cost to the parents of the child. (34 CFR 300.104)~~

~~(9) The Secretary, or his designee, shall establish a system whereby the Agency of Education identifies and maintains current information on residential facilities, or other programs in Vermont and elsewhere, that provide educational programs to students with a variety of disabilities. Information about such facilities or programs may include, but not be limited to, the categories of disabilities served by the facility or program; the state's approval status; the costs associated with tuition and services for which the facility or program charges a fee; and any other pertinent information. Any information system created by the Agency shall include a description of procedures for gathering updated information.~~

~~2366.9.2.6 — Due Process Hearing~~

~~When the residential review team recommends that a student does not require residential placement, the Secretary may initiate a special education due process hearing under Rule 2365.1.6 to determine the appropriate placement for the child.~~

~~2366.10 Local Educational Agency Plan (LEAP)~~

~~Each LEA, which receives IDEA B federal funds, shall submit a local education agency plan as required by the Vermont Agency of Education.~~

Commented [CJ241]: Rule deleted – replaced in proposed Special Ed. Finance and Census-based Funding Rules.

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