

State of Vermont
Supplemental Rules

Pertinent to Special Education



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State of Vermont

Supplemental Rules - Pertinent to Special Education

Supplemental Rules Pertinent to Special Education and Section 504 of the Rehabilitation Act

1251 Reasonable Accommodations

When a student with disabilities is not eligible for special education, but is determined to have a disability, accommodations shall be made as needed in such areas as adaptations, including behavior management interventions, and supplemental aids and services. Other regulations contained in Section 2360 et seq. shall not apply to these students. See Rule 2362.2.6.

1252 Instruction for Homebound and Hospitalized Students

- 1) Pupils are eligible for instruction at home or in the hospital whenever they are unable to attend school for a period of ten consecutive school days or more because of pregnancy or a medical disability.
- 2) Homebound or hospitalized elementary pupils shall receive instruction for no less than an average of six hours per week unless inconsistent with medical recommendations. Homebound or hospitalized secondary pupils shall receive instruction for no less than average of two hours per subject per week unless inconsistent with medical recommendations. Instructional materials shall be provided by the district of attendance.

1253 Hearings Under Section 504

Conflicts and alleged violations under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794 may be resolved through due process hearings in the same manner as for a special education due process hearing under Rule 2365.1.6. All the procedures for such a due process hearing according to Rule 2365.1.6, including the time limits of 16 VSA §2957, apply to Section 504 hearings. The hearing officer may award declaratory and injunctive relief but not damages, costs or attorney's fees. In addition to, or in lieu of a due process hearing, a person may file a complaint with the Office of Civil Rights in Boston, MA.

2120.8.2.1(c) Multi-year Plans

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

A request for a Multi-year Plans may be made by students, parents, teachers, and guidance personnel, or school administrators.

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

When approved, completion of the Multi-year Plan shall be stated as one of the goals in the student's IEP.

Upon successful completion of an approved Multi-year Plan for graduation, a diploma shall be awarded to the student.

2194 Educational Support System

In accordance with 16 V.S.A. §2902 and Rule 2120.8.3 of the School Quality Standards:

- (a) Each school shall ensure that a comprehensive system of support services is in place, including an Educational Support Team, to assist all students in working toward attainment of the Vermont Framework standards or comparable standards.
- (b) Each school's comprehensive system of support services shall:
 - (1) Increase the ability of the general education system to meet the needs of all students, including those who require additional assistance in order to succeed or be challenged,
 - (2) Be integrated with the general education curriculum,

- (3) Provide a range of support and remedial services, including instructional and behavioral interventions and accommodations,
 - (4) Provide needed student support regardless of eligibility for categorical programs, and
 - (5) Involve families, community supports and the system of health and human services.
- (c) Each school's comprehensive system of support services shall be designed to prevent or mitigate factors which may interfere with student learning, and to ensure that students receive the specialized or intensive support they may require to work toward attainment of the standards contained in the Framework or comparable standards.

2195 Grant Applications for In-service Training Funds

- (1) On April 15th of each fiscal year through fiscal year 1995, the Secretary shall solicit applications for in-service training funds for the training of teachers and administrators in the identification and evaluation, and provision of educational services to students who require classroom supports.
- (2) Applications shall be filed by May 15th on a form prescribed by the Secretary.
- (3) In distributing these in-service training funds, preference will be given to those districts which demonstrate the greatest need. The following factors may be considered in determining greatest need:
 - (a) The percentage of students in special education;
 - (b) The percentage of students receiving special education outside of the general classroom environment;
 - (c) The degree of the school restructuring activities being proposed;
 - (d) The extent to which the proposed training will result in lasting change to the school system;
 - (e) The unique training requirements based on staff turnover, staff shortages or the training needs of the staff; and
 - (f) A high student to staff ratio.

2224.2 Tuition for Independent Schools

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

- (a) The school is approved for special education purposes pursuant to Rule 2228 et seq.;
- (b) There is an order from a court or from a due process hearing pursuant to Rule 2365.1.6 requiring such payment, or
- (c) The Secretary has approved an exception for a placement in an independent school pursuant to Rule 2228.2(2).

2228 Special Education Approval of Independent Schools

2228.1 Special Education Approval of Independent Schools

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

- 2) **Limitation of Special Education Approval.**

Each special education approval may be limited to one or more categories of disability, as defined in Rules 2362.1 and 2360.5.5, including the category of “developmental delay”, according to the services the school provides.

- 3) **Out-of-State Programs.**

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

2228.2 Placement Restrictions

(1) Placement Prohibition.

No responsible agency, as defined by Rule 2361.1(23), shall make a special education placement in an independent school that has not been approved for special education purposes nor shall such a placement be made in an independent school that serves special education students who are in a category of disability different from that under which the student was determined to be eligible for special education unless the placement is pursuant to:

- (a) Subsection (2) of this rule,
- (b) A court order, or
- (c) A hearing officer order.

(2) Exceptional Circumstances - Approval Process

Upon application by a responsible LEA, the Secretary may permit, in exceptional circumstances, a special education placement in an independent school that is approved pursuant to Rule 2200, but has not received approval for special education purposes pursuant to Rule 2228.1. Notwithstanding Rule 2366.2.6 and 2366.2.7, in instances in which the Secretary grants such approval, tuition and associated otherwise allowable costs shall be reimbursable under subchapter 2 of Chapter 101 of Title 16 of the Vermont Statutes Annotated. Any person aggrieved by the Secretary's decision may file an appeal with the State Board of Education pursuant to 16 V.S.A. §828.

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

2228.3 Requirements for Approval

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

- (1) Admissions;
- (2) Least restrictive environment;
- (3) Discipline;
- (4) Graduation;
- (5) Faculty qualifications; and
- (6) Faculty-student ratios, including ratios that meet the Vermont School Quality Standards for the direct provision of special education and related services or consultation regarding the provision of special education and related services to publicly-placed students on IEPs;

2228.3.1

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

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

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

2228.3.2

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

2228.4 Written Agreements Required

2228.4.1 Agreement as to Costs

In order to obtain special education approval, an independent school shall assure the State Board of Education that prior to enrolling a publicly-placed student who is served pursuant to an IEP, it will enter into a written agreement with the sending responsible agency that outlines tuition, room, board and other costs associated with the student's attendance. For students on an IEP who are placed by a state agency or a designated community mental health agency, or any other agency defined by the Secretary, in accordance with 16 V.S.A. §2948, the agreement shall be with the Secretary of Education. In the instance of an emergency placement, such provisions may be agreed upon within thirty days of the student's enrollment.

2228.4.2 Agreement as to Non-Instructional Services

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

2228.5 Special Education Approval Procedures

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

2228.6 Notification of Changes

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

2228.7 Minimum Standard of Service

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

2228.8 Rate Approval for Independent Schools Approved for Special Education Purposes

- (1) Each independent school approved for special education purposes by the State Board of Education shall annually report its rates for special education tuition, related services and room and board to the Secretary on a form prescribed for that purpose.
- (2) The rates that an independent facility approved for special education purposes charges for tuition, related services and room and board shall be no more than the costs that are reasonably related to the level of services provided to its publicly-placed special education students. Reasonable relationship shall be determined by utilizing generally accepted accounting principles, such as those set forth in the Handbook (II) for Financial Accounting of Vermont School Systems.
- (3) The Secretary shall review each special education approved independent school's annual rate report. If the Secretary concludes that a special education approved independent school's rates are not reasonably related to the level of services provided to publicly-placed special education students, the Secretary shall make a determination as to the maximum rate that public schools and

the State Agency of Education would pay to the independent school for those services and offer the school an opportunity for explanation regarding why the maximum rate the Agency would pay is not adequate. If the explanation is not satisfactory to the Secretary, he or she shall notify the Council for Independent Schools and shall refer the matter to the State Board of Education.

(a) Upon such referral by the Secretary, the Board shall conduct a formal proceeding in accordance with the requirements of Rule 1230, et seq.

(b) The State Board's determination shall be final.

(4) Time lines for rate approvals from the Agency

(a) To have a new rate approved for the ensuing school year, an independent school shall submit a request for rate approval with supporting documentation to the Agency prior to November 15. The Secretary shall notify the independent school of the results of the review on or before January 15.

(b) If a request for a new rate approval is not submitted by November 15, the most recent approved rate will be in effect until the following November 15, when the next rate request is due.

2228.9 Standards and Regulations

The Vermont State Board of Education shall afford the opportunity for approved independent schools to participate in the development and revision of State standards that apply to independent schools.

2229 Corrections Education Program

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

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

2230.1

“Tutorial program” means education provided to a pupil who is placed in a short-term program that is not administered by an LEA. The purpose of the program is to provide evaluation and/or treatment. This does not include home based tutorials, programs operated by a public school or collaborative, or a program of an independent school that has been approved under 16 V.S.A. §166. The average length of stay for students in a tutorial program shall be not more than six months. The Secretary may waive the average length of stay time period for individual programs, based upon needs of the students served by the program

2230.2 Procedures for Approval

2230.2.1 Application shall include the following:

- (a) Name, address, telephone number of the tutorial program,
- (b) Name of the Chief Executive Officer or contact person,
- (c) A statement of the tutorial program's purpose and objectives,
- (d) A description of the tutorial program enrollment including a statement of who it is designed to serve,
- (e) A description of the plan of organization for the tutorial program and
- (f) A tutorial program calendar.

2230.2.2 Review

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

2230.2.3 Report to the Secretary

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

2230.2.4 Board Action

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

2230.2.5 Term of Approval

The State Board may grant approval for a term of not more than two years. The tutorial program shall be approved prior to receiving tuition payments from a public LEA.

2230.2.6 Renewal

Not less than three months prior to expiration of a tutorial program's approval, the Secretary shall send an application packet and a letter notifying the program when the site visit will occur. The completed application shall be received from the tutorial program not later than 30 days prior to the scheduled site visit.

2230.2.7 Denial, Revocation or Suspension of Approval

Prior to recommending denial, revocation or suspension of approval to the State Board of Education, the Secretary shall notify the tutorial program of the reasons for the proposed action and shall afford the tutorial program an opportunity to be heard by the Board. Approval of a tutorial program shall be revoked or suspended by the Board based on a finding that the tutorial program no longer meets the criteria for approval.

2230.2.8 Standards and Regulations

The Vermont State Board of Education shall afford the opportunity for approved tutorial programs to participate in the development and revision of State standards that apply to tutorial programs.

2230.3 Criteria for Approval

In order for a tutorial program to obtain approval from the State Board of Education, the program shall meet both the general and special education requirements in the following areas:

2230.3.1 The instruction and methods of instruction offered are age and ability appropriate for the student and are coordinated with the student's responsible LEA as set forth in Rule 2230.3.10, below.

2230.3.2 The tutorial program has sufficient facilities and materials or access to other facilities and additional materials as necessary to provide an appropriate education.

- 2230.3.3 The tutorial program's facilities and operation comply with local, state and federal requirements pertaining to the health and safety of students.
- 2230.3.4 The tutorial program employs an adequate number of professional staff for the population served and these staff members are qualified by training and experience in the areas in which they are assigned.
- 2230.3.5 Teachers providing or supervising the provision of special education have licensure and endorsement as would be required for the equivalent work in a Vermont public school.
- 2230.3.6 All professional staff has relevant experience and/or training in the duties to which they are assigned.
- 2230.3.7 The tutorial program maintains a register of the daily attendance of each of its pupils and reports the attendance to the responsible LEA.
- 2230.3.8 The tutorial program maintains an operating schedule that includes instruction for no less than ten hours per week unless inconsistent with medical and/or educational recommendations. The operating schedule shall be sufficient to ensure that the instructional services address the individual needs of a student with disabilities and are consistent with the student's IEP.
- 2230.3.9 The tutorial program has the financial capacity to carry out its educational purposes for the period of approval
- 2230.3.10 The tutorial program coordinates educational services with the responsible LEA, including credit for coursework for high school and coordinates with other responsible agencies such as Department of Children and Families, Community Mental Health Centers, and Family-Parent Child Centers by:
- 2230.3.10.1 Contacting the responsible LEA (s) (see 16 V.S.A. §1075) in order to access school records and determine the special education status of the student:

2230.3.10.2 Reviewing the IEP, the student's needs and its own ability to implement the IEP;

2230.3.10.3 Making a formal referral for a special education evaluation to the responsible LEA if when receiving a student, he/she is suspected of having a disability.

2230.3.10.4 Maintaining educational records and disclosing them to the responsible LEA and the student's parents, unless restricted by statute, court order or other legally binding document specifically revoking those rights;

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

2230.3.10.6 Implementing IEPs; and

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

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

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

2230.4 Rate Approval for Tutorial Programs

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

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

2230.4.3 The Secretary shall review each tutorial program's annual rate report. If the Secretary concludes that a tutorial program's rates are not reasonably related to the services provided, the Secretary shall make a determination as to the maximum rate that public schools and the State Agency of Education would pay to the tutorial program for those services and offer the tutorial program an opportunity for explanation regarding why the maximum rate the Agency would pay is not adequate. If the explanation is not satisfactory, the Secretary shall refer the matter to the State Board of Education.

2230.4.3.1 Upon such referral by the Secretary, the State Board of Education shall conduct a formal proceeding in accordance with the requirements of Rule 1230, et seq.

2230.4.3.2 The State Board of Education's determination shall be final.

4312 Discipline Procedures for Students Who are Not Eligible for Special Education Services, but Who Are or May Be Qualified Individuals with Disabilities under Section 504 of The Rehabilitation Act of 1973 (29 U.S.C. § 794; 34 C.F.R. § 104 et seq.)

In addition to the general disciplinary procedures found within Rule 4311, and in accordance with 34 C.F.R. §104.36, the following procedures apply to children who are qualified individuals with disabilities as defined by Section 504 of the Rehabilitation Act of 1973 (hereinafter Section 504).

- (1) A Section 504 student shall not be removed from his or her current educational placement for disciplinary reasons for more than 10 consecutive school days in a school year unless the following procedures have been completed:
 - (a) A re-evaluation, as defined by 34 C.F.R. §104.35; and
 - (b) A determination by the student's Section 504 team that the conduct is not a manifestation of his or her disability.

- (2) A Section 504 student shall not be removed from his or her current educational placement for disciplinary reasons for more than 10 cumulative days in a school year when the removals constitute a change in placement as defined in Rule 4313.7 unless the following procedures have been completed:
 - (a) A re-evaluation, as defined by 34 C.F.R. §104.35; and

- (b) A determination by the student's Section 504 team that the conduct is not a manifestation of his or her disability.
- (3) When it is determined by a student's Section 504 team that the conduct is not a manifestation of the student's qualifying disability, the student may be disciplined in the same manner, and subject to the same disciplinary consequences, as a non-disabled child, including suspension or expulsion without the provision of services.
- (4) When it is determined by a student's Section 504 team that the conduct is a manifestation of his or her qualifying disability, a change in program or placement may be implemented by the student's Section 504 team and the student's Section 504 team may respond to the conduct by designing, amending and/or enforcing a plan of behavior management.
- (5) If, at the time of the occurrence of conduct that gives rise to consideration of removal of a student from his or her current educational placement for more than 10 consecutive school days in a school year, the student is believed to be a qualified individual with a disability under Section 504, a Section 504 evaluation shall be completed prior to imposition of the removal.
 - (a) If the evaluation results in a determination that the student is a qualified individual with a disability under Section 504, the discipline procedures in this rule shall be followed.
 - (b) If the evaluation results in a determination that the student is not a qualified individual with a disability under Section 504, the discipline procedures in Rule 4311 shall be followed.
- (6) If, at the time of the occurrence of conduct that gives rise to consideration of removal of a student who is believed to be a qualified individual with a disability under Section 504 for more than 10 cumulative school days in a school year, and the removals constitute a change in placement as defined in Rule 4313.7, a Section 504 evaluation shall be completed prior to imposition of the removal.
 - (a) If the evaluation results in a determination that the student is a qualified individual with a disability under Section 504, the discipline procedures in this rule shall be followed.
 - (b) If the evaluation results in a determination that the student is not a qualified individual with a disability under Section 504, the discipline procedures in Rule 4311 shall be followed.

- (7) If a child who is a qualified individual under Section 504 possesses or carries a weapon, as defined in Rule 4313.1(g), to school or at a school function, he or she may be placed in an interim alternative educational setting in accordance with the procedures set forth in Rule 4313.1(g) and Rule 1253. The student's Section 504 team shall determine the IAES, and the services provided in the IAES, in accordance with the procedures set forth in Rule 4313.1. It is the intent of this section to discipline a child who is a qualified individual under Section 504 in the same manner as students who are eligible for special education when they possess weapons at school or at school functions.
- (8) When a parent disagrees with disciplinary action taken by an LEA, the parent may request an impartial due process hearing, and the procedures in Rules 2365.1.6.2 through 2365.1.9 shall apply. In addition to or in lieu of a due process hearing a parent may file a complaint with the U.S. Agency of Education Office for Civil Rights.
- (9) A hearing officer may order a change in the placement of a child who is a qualified individual under Section 504 to an appropriate IAES for not more than 45 calendar days, if the hearing officer, in an expedited due process hearing:
- (a) Determines that the LEA has demonstrated by substantial evidence, which for purposes of this section shall mean a preponderance of the evidence, that maintaining the current placement of the child is substantially likely to result in injury to the child or others;
 - (b) Considers the appropriateness of the child's current placement;
 - (c) Considers whether the LEA has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and
 - (d) Determines that the IAES that is proposed by school personnel will enable the child to continue to progress in the general curriculum. The services provided to and modifications made for the child in the IAES shall be designed to address and prevent the child's offending behavior.
- (10) This Rule (4312) shall not apply when a responsible agency takes disciplinary action against a Section 504 student if:
- (a) The misconduct for which the student is being disciplined pertains to the use or possession of illegal drugs or alcohol at school or at a school function; and

- (b) The student is currently engaging in the use of alcohol or illegal drugs. In this instance, the Section 504 student shall be disciplined in accordance with Rule 4311.

4313 Discipline Procedures for Students Eligible for Special Education Services

In addition to the general disciplinary procedures found within Rule 4300, the following procedures apply to children eligible for special education services:

4313.1 Authority of School Personnel.

- (a) Case-by-case determination. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.
- (b) General.
 - (1) Under this section, the school principal/designee, in consultation with the special education case manager may remove a child with a disability who violates a code of student conduct from their current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under Rule 4313.7).
 - (2) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the LEA shall provide services to the extent required under paragraph (d) of this section.
- (c) Additional authority. For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to paragraph (e) of this section, school personnel in consultation with the special education administrator may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in paragraph (d) of this section.
- (d) Services.

- (1) Except as provided in paragraphs (d)(3) and (d)(4) of this section, a child with a disability who is removed from the child's current placement pursuant to paragraphs (b), (c), or (g) of this section shall--
 - (i) 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
 - (ii) 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 recur.
 - (2) The services required by paragraph (d)(1) of this section may be provided in an interim alternative educational setting.
 - (3) An LEA need not provide services during periods of removal under paragraph (b) of this section 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 services are not provided to a child without disabilities who has been similarly removed.
 - (4) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under Rule 4313.7, school personnel, in consultation with the child's special education case manager, determine the extent to which services are needed under paragraph (d)(1) of this section, if any, and the location in which services, if any, will be provided.
 - (5) If the removal is for more than 10 consecutive school days or is a change of placement under Rule 4313.7, the child's IEP Team determines appropriate services under paragraph (d)(1) of this section and the location in which services will be provided.
- (e) Manifestation determination
- (1) Except for removals that will be for not more than 10 consecutive school days and will not constitute a change of placement under Rule 4313.7, 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, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) shall review all relevant information in the

student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine--

- (i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
 - (ii) If the conduct in question was the direct result of the LEA's failure to implement the IEP.
- (2) The conduct shall be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met.
- (f) Determination that behavior was a manifestation. If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team shall--
- (1) Either-
 - (i) Conduct a functional behavioral assessment, unless the LEA 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
 - (ii) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and
 - (2) Except as provided in paragraph (g) of this section, return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.
- (g) Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child--
- (1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA;
 - (2) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or
 - (3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.

(h) Notification. Not later than the date on which the decision to take disciplinary action is made, the LEA shall notify the parents of that decision, and provide the parents a copy of their Parents' Rights in Special Education.

(i) Definitions. For purposes of this section, the following definitions apply:

- (1) 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), as amended).
- (2) 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.
- (3) Serious bodily injury has the meaning given the term "serious bodily injury" under Section 1365(h)(3)(A – D) of Title 18, United States Code, as amended.
- (4) Weapon has the meaning given the term "dangerous weapon" under of Section 930(g)(2) of Title 18, United States Code, as amended.

4313.2 Determination of Setting.

The interim alternative educational setting referred to in Rule 4313.1(c) and (g) is determined by the IEP Team.

4313.3 Appeal.

(a) General. The parent of a child with a disability who disagrees with any decision regarding placement under Rules 4313.1 and 4313.2, or the manifestation determination under Rule 4313.1(e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may request a hearing.

(b) Authority of hearing officer.

- (1) A hearing officer in an impartial due process hearing hears, and makes a determination regarding, an appeal requested under paragraph (a) of this section.
- (2) In making the determination under paragraph (b)(1) of this section, the hearing officer may--

- (i) 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 Rule 4313.1 or that the child's behavior was a manifestation of the child's disability; or
 - (ii) 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.
- (3) The procedures under paragraphs (a) and (b)(1) and (2) of this section may be repeated, if the LEA believes the child would be dangerous if returned to the original placement.
- (c) Expedited hearing.
 - (1) Whenever a hearing is requested under paragraph (a) of this section, the procedures of Rule 2365.1.6.17 shall be followed and the parents and LEA involved in the dispute shall have an opportunity for an impartial due process hearing consistent with the requirements of the rules relating to Resolution Sessions and Impartial Due Process Hearings, except as provided in paragraph (c)(2) through (5) of this section.
 - (2) The LEA shall arrange for an expedited hearing, which shall occur within 20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing.
 - (3) Except as provided in a written waiver of the resolution session or in an agreement to mediate
 - (i) A resolution session meeting shall occur within seven days of the date the hearing is requested, and
 - (ii) The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of receipt of the hearing request.
 - (4) The decisions on expedited due process hearings are appealable consistent with those rules associated with due process hearing appeals.

4313.4 Placement During Appeals.

When an appeal under Rule 4313.3 has been requested by either the parent or the LEA, the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in Rule 4313.1(c) or (g), whichever occurs first, unless the parent and the SEA or LEA agree otherwise.

4313.5 Protections for Children not yet Eligible for Special Education and Related Services.

- (a) General. A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this part if the LEA had knowledge (as determined in accordance with paragraph (b) of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.
- (b) Basis of knowledge. An LEA shall be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred--
 - (1) The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;
 - (2) The parent of the child requested an evaluation of the child pursuant to the rules relating to Procedures for Evaluation and Determination of Eligibility; or
 - (3) The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency in accordance with the agency's established child find or special education referral system.
- (c) Exception. An LEA would not be deemed to have knowledge under paragraph (b) of this section and the student would not receive special education protections available only to students with a disability or suspected of having a disability, if:
 - (1) The parent of the child:
 - (i) Has not allowed an evaluation of the child pursuant to special education evaluation procedures; or
 - (ii) Has refused services under this part; or
 - (2) The child has been evaluated and determined not to be a child eligible for special education.
- (d) Conditions that apply if no basis of knowledge.
 - (1) If an LEA does not have knowledge that a child is a child with a disability (in accordance with paragraphs (b) and (c) of this section) prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without

disabilities who engaged in comparable behaviors consistent with paragraph (d)(2) of this section.

- (2) (i) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under Rule 4313.1, the evaluation shall be conducted in an expedited manner.
- (ii) 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.
- (iii) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with this part, including the requirements of Rules 4313.1 through 4313.7 and Section 1412(a)(1)(A) of the Individuals with Disabilities Education Improvement Act, as amended.

4313.6 Referral to and Action by Law Enforcement and Judicial Authorities.

- (a) Rule of construction. Nothing in this part prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or prevents State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.
- (b) Transmittal of records.
 - (1) An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.
 - (2) An agency reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

4313.7 Change of Placement because of Disciplinary Removals.

For purposes of removals of a child with a disability from the child's current educational placement under Rules 4313.1 through 4314.4, a change of placement occurs if:

- (a) The removal is for more than 10 consecutive school days; or
- (b) The child has been subjected to a series of removals that constitute a pattern--
 - (1) Because the series of removals total more than 10 school days in a school year;
 - (2) Because the child's behavior is substantially similar to the child's behavior in the incidents that resulted in the series of removals, taken cumulatively, is determined, under Rule 4313.1(f), to have been a manifestation of the child's disability; and
 - (3) Because of 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.