BOARD OF EDUCATION

MANUAL OF RULES AND PRACTICES

JAMES DOUGLAS, GOVERNOR

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VERMONT STATE BOARD OF EDUCATION

MANUAL OF RULES AND PRACTICES

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1100 THE STATE DEPARTMENT OF EDUCATION 9/17/07

1110 Establishment

1111 Definition: 16 VSA § 11(14)

1112 Departments Created: 3 VSA § 212

1120 Powers and Duties

The powers and duties of the Department of Education are derived from the powers and duties of the State Board of Education and the Commissioner of Education. Title 16 Vermont Statutes Annotated.

1130 Structure of the State Department of Education

The organizational structure of the Vermont Department of Education shall be as recommended by the Commissioner and approved by the State Board of Education.

1200 State Board of Education

1210 Organization

1211 Membership See: 16 VSA § 161

1212 Removal of Members See: 16 VSA § 162

1213 Compensation See: 16 VSA § 1010

1214 Officers See: 16 VSA § 161, 211

1215 Powers and Duties See: 16 VSA § 144-174, 211, 213, 3011-3019

1220 Meetings

1221 Schedule

Regular meetings of the State Board are scheduled on the third Monday and/or Tuesday of each month to the extent practical.

1222 Rules of Order

"Robert's Rules of Order" shall govern the conduct of state board meetings.

1223 Agenda

The agenda of state board meetings shall be prepared by the commissioner or his designee upon consultation with the chairman. Members of the state board may add items by request. The agenda shall be distributed as close to two weeks prior to a regular meeting as practical.

1224 Minutes

Minutes shall be prepared in accordance with law and shall be distributed to individuals or groups on request.

1225 Special Meetings See: 16 VSA § 163

1230 Rules of Practice

1231 Administrative Procedure Act

Hearings, appeals, rule-making, and declaratory rulings shall be conducted in accordance with 3 VSA Chapter 25. The commissioner or his designee shall prepare and sign all forms necessary for the proposal and adoption of rules.

1232 Formal Proceedings

A formal proceeding is a proceeding authorized by a provision of Title 16 of the Vermont Statutes Annotated or the State Department of Education's Manual of Rules and Practices which designates the State Board of Education, the Department of Education or the Commissioner as the authority to sit in a quasi-judicial capacity and make a determination. The authority designated in a particular provision of statute or rule will hereafter in these rules be referred to as the hearing authority.

The provisions in statute or rule calling for a formal proceeding include but are not limited to:

1) 16 VSA 164 (5) Rule 5713	Licensing of teachers and other school personnel
2) 16 VSA 165 Rule 2122.6	School Quality Standards
3) 16 VSA 164 (14), 166 Rule 2248.1	Private and Independent School Approval
4) 16 VSA 164 (14), 166a	Home Study
5) 16 VSA 828	Tuition
6) 16 VSA 1075	Residency
7) 16 VSA 168 (b), 2944 (c) Rules 2365.1.6 – 2365.1.11	Special Education

A "party" to a formal proceeding is an individual or legal entity actively taking part in a legal proceeding and directly affected by its outcome. For purposes of these rules a "person" shall be defined by 1 VSA 128.

1232.1 Commencement of Formal Proceedings

1232.1.1 A party to a formal proceeding before the hearing authority may represent himself or herself or he or she may be represented by an attorney or other representative.

1232.1.2 A formal proceeding before the hearing authority shall be initiated by filing a petition with the hearing authority. Except for interventions during the course of a hearing all persons who wish to petition for permission to intervene in formal proceedings shall give notice in writing of intent to do so to the hearing authority. The grant of the petition to intervene under this rule and Rule 1232.2.5 is within the discretion of the hearing authority and shall be based on whether the petition is relevant to the formal proceedings or otherwise necessary to a full and complete disposition of the formal proceeding. The hearing

authority shall notify all other parties upon intervention of a new party.

1232.1.3 All notice given to or by an attorney of record for a party in a formal proceeding shall be considered in all respects as notice to or from that party.

1232.1.4 When an attorney has appeared for a party in a formal proceeding, he shall remain attorney for such party until he has been granted leave to withdraw by order of the hearing authority.

1232.2 Filing and Service of Documents

1232.2.1 The document initiating a formal proceeding before the hearing authority shall be signed by the person filing the document and shall be filed with the hearing authority in quadruplicate. The document shall include the following information:

(a) A statement of the legal authority of the hearing authority to determine the case;

(b) A short and plain statement of the issues involved;

(c) The outcome sought.

1232.2.2 All papers filed with the hearing authority in formal proceedings shall be on paper measuring 8 ½ x 11 inches. Filing shall be deemed to occur when a document or paper is received by the hearing authority or the Department of Education.

1232.2.3 Every document or paper filed by a party subsequent to the initial petition in a formal proceeding shall be served upon all other parties. The hearing authority shall serve a copy of the initial petition upon all parties entitled by law to be served. Service shall consist of hand delivering a copy or mailing

it to the party's last known address. Delivery of a copy means handing it to the attorney or to the party, or leaving it at his or her office with the person in charge thereof, or if the office is closed or the person to be served has no office, leaving it at his dwelling, house, or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail shall mean first class mail, in a sealed and properly stamped envelope. Service by mail is deemed complete upon posting the mail in a proper United States Post Office receptacle. The document or paper shall contain a signed statement stating upon whom, and the means by which, the document has been served.

1232.2.4 The response to an initial petition by persons permitted or required by law to respond shall be filed with the hearing authority and all parties by the date of the pre-hearing conference, if any, authorized by Rule 1236 of these rules, but no later than seven days prior to the date set for the hearing of the case.

1232.2.5 A petition for permission to intervene in a formal proceeding must set forth the grounds of the proposed intervention, of position and interests of the petitioner in the proceeding, and whether the petitioner's position is in support of or in opposition to the remedy sought by the person initiating the proceeding.

1232.2.6 In its discretion the hearing authority may treat any written communication to it concerning a matter within its legal authority as a petition initiating a formal proceeding.

1232.2.7 Written memoranda in support of a party's position, if any, shall be filed no later than 5 days following the conclusion of a hearing. This 5-day requirement may be waived by the hearing authority for good cause.

1232.3 Hearings

1232.3.1 An oral hearing shall be held in every formal proceeding except that hearing may be waived in the discretion of the hearing authority: (1) in a formal rule-making or declaratory ruling proceeding, if no request for a hearing is made at least five days prior to the hearing date in accordance with 3 VSA 803(a); and the petitioner, if any, waives hearing; and (2) in any other formal proceeding if all the parties file written waivers of opportunity for hearing.

1232.3.2 Upon the filing of a petition initiating a formal proceeding, or upon the initiation of such a proceeding by the hearing authority on its own motion, the hearing authority shall order or otherwise assign a time and place for the hearing thereof and the hearing authority shall cause written notice of the hearing to be served upon each party.

1232.3.3 Hearings shall be transcribed at the request of any party made at least 10 days prior to the hearing upon payment of the reasonable costs thereof.

1232.3.4 The admissibility of evidence in all formal proceedings before the hearing authority will be determined under the criteria specified in 3 VSA 810 (1) – (4).

1233 Petitions for Rule-making

Petitions for the adoption, amendment, or repeal of any rule will be entertained by the State Board of Education or the Department of Education. Such petitions shall be filed with the commissioner. Such petitions will be considered and disposed of pursuant of the procedure specified in 3 VSA 806.

1234 Informal Proceedings

Informal proceedings shall be governed by procedures that the board, department, commissioner, or hearing officer deems appropriate under the circumstances.

1235 Declaratory Ruling

Petitions for declaratory ruling as to the applicability of any statutory provision or of any rule or order of the state board of education or the Department of Education will be entertained by the board or the department. Such petitions shall be filed with the commissioner and will be considered and disposed of promptly.

1236 Hearing Officers and Pre-hearing Conferences

1236.1 The state board, department, or commissioner may appoint a hearing officer who shall conduct pre-hearing conferences, conduct any hearings that may be required and prepare proposed findings of facts and conclusions of law for a decision by the hearing authority. A designated hearing officer shall have all other duties and powers of a hearing authority as provided in these rules.

1236.2 The state board, department, or commissioner shall review the proposed findings of fact and conclusions of law and render the decision.

1236.3 The hearing authority may order the parties to attend pre-hearing conferences prior to formal hearing.

1240 Exceptions to Rules

The Board of Education or the Department of Education may take a proceeding partially or entirely out of these rules when the law so permits and in its opinion the interest of the public so requires.

1250 Discrimination

In order to provide equal educational and equal employment opportunities, no student and/or public school employee in the State of Vermont shall be excluded from participation in, be denied the benefits of, or be subject to discrimination under any educational program or activity receiving federal and/or state funds as the result of or based on sex, race, color, creed, national origin, sexual orientation, or solely by reason of handicap/disability.

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 an 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.

1260 Waivers

The State Board of Education will consider waiving its established regulations when necessary for school districts to carry out locally established objectives.

2000 SCHOOL QUALITY STANDARDS 2/9/06

2100 Statutory Authority: 16 V.S.A. §§164 and 165

2110 Statement of Purpose

The purpose of these rules is to ensure that all students in Vermont public schools are afforded educational opportunities that are substantially equal in quality and are designed to enable them to achieve or exceed the expectations set forth in *Vermont's Framework of Standards and Learning Opportunities*.

These rules are designed to ensure continuous improvement in student performance and the provision of high quality programs to enable students to attain rigorous standards. To enable schools to meet locally established objectives while at the same time enabling students to achieve or exceed the above-referenced standards, flexibility is provided in Rule 2121.

Nothing herein shall be construed to entitle any student to educational programs or services identical to those received by other students in the same or different school districts. Further, nothing herein shall create a private right of action. These rules are in addition to and, unless otherwise specifically provided, do not supersede other rules contained in the Vermont State Board of Education Manual of Rules and Practices.

2111 Adoption of Student Performance Standards

(a) Pursuant to 16 V.S.A. §164 (9), the State Board of Education hereby adopts and incorporates herein by reference *Vermont's Framework of Standards and Learning Opportunities* (hereinafter "Framework"), dated Spring 1996, as the standards for student performance in Vermont. The Framework shall be used to measure the performance of individual schools, as set forth in 2123.2 (a) of these rules. Schools shall use the Framework or comparable standards as the basis for the development and selection of curriculum, methods of instruction, locally developed assessments, and the content and skills taught and learned in school.

(b) The Framework may be updated and amended from time to time through a public process pursuant to written procedures developed in advance by the State Board of Education. The amendment process shall include, at minimum:

(1) statewide notice in newspapers of general circulation in all areas of the state,

(2) a period for written public comment,

(3) at least one public hearing, and

(4) consideration and adoption of the amendments at a duly warned regular State Board meeting.

2112 Definitions

The following definitions shall apply to these rules unless the context clearly requires otherwise:

(1) “Academic record” includes standardized test scores, dates of attendance, multi-year plan, rank in class, awards, activities, clubs and other information not included in a student’s transcript, as locally determined.

(2) “Applied learning” means the presentation of subject matter in a way that integrates a particular academic discipline (such as mathematics, science or English) with life experiences both in school and out of school and with personal workforce applications.

(3) “Commissioner” means the Commissioner of Education or his or her designee.

(4) “Comparable standards” means standards which are substantially equal in scope and rigor to the Framework in that they provide the basis for development and implementation of local curriculum, instruction, and assessment and identify the essential content and skills that should be taught and learned in school.

(5) “Course of instruction” or “year of study” means 120 hours of instruction per subject.

(6) “Educational Technology” means instruction and/or preparation in the appropriate use of current technology to provide students with the knowledge and skills needed to (electronically) communicate, solve problems, and to access, manage, integrate, evaluate and create information.

(7) “Needs-based professional development” means staff development based upon needs identified through an examination of student performance data and related data and aligned with a school’s action plan for improving student performance.

(8) “School” means an individual public school building or combination of public school buildings with one administration. Where the context suggests that a “school” take some action, the action shall be taken by the school board or such school officials as are designated by the school board, unless otherwise specified. “School” includes a technical center.

(9) “Superintendent” means the superintendent of schools or person or persons assigned the duties of a superintendent pursuant to 16 V.S.A. §241(c).

(10) “Technical Education” - Secondary technical education means an educational program leading to a high school diploma, designed to provide students with technical knowledge, skills and attitudes that will prepare them for further education, enhance their employment options, or lead to an industry- recognized credential.

(11) "Technology Integration" means the infusion of technology into the curriculum as a tool to enhance learning in a content area or multidisciplinary setting, enabling students to select technology tools to help them obtain information in a timely manner, analyze and synthesize the information, and present it professionally.

(12) "Transcript" means a formal document certifying a student's or former student's progress or attainments in grades nine through twelve and at minimum includes the student's name, date of birth, last known address, years of attendance, courses taken, grades received, grade point average, and diploma or certificate of completion awarded.

2120 Specific School Quality Standards

In order to carry out Vermont's policy that all public school children will be afforded educational opportunities which are substantially equal in quality, and in order to ensure continuous improvement in student performance, each public school shall:

(a) pursuant to Rule 2122.1, biennially complete the School Quality Standards Report, file it with the Commissioner, and report on its findings to the community in an understandable and comprehensive form; and

(b) meet the following school quality standards:

2120.1 Action Plans

An action plan shall be developed and implemented in each public school. The plan shall be designed to improve the performance of all students enrolled in the school. If a school district comprises more than one school building, a combined plan for some or all the buildings may be developed. The plan, however, shall reflect the different needs of individual schools.

The plan shall be developed with the involvement of school board members, students, teachers, administrators, parents and other community members.
The plan shall be developed using student performance data obtained from state and local assessments and other information related to student performance which may include, but is not limited to, dropout and retention rates, attendance, course enrollment patterns and graduation rates.

The school board shall approve the plan, which at minimum shall contain:

(a) Goals and objectives for improved student learning,

(b) Educational strategies and activities specifically designed to achieve these goals, including professional development of administrative and instructional staff, and

(c) Strategies and supports to ensure the school maintains a safe orderly civil and positive learning environment which is free from harassment, hazing and bullying.

The plan shall be reviewed at least annually for its effectiveness toward meeting the stated goals and shall be revised as necessary based upon current student performance data.

2120.2 Assessment System

2120.2.1 Participation in the State Comprehensive Assessment System

Each school shall administer assessments of student performance using methods developed under 16 V.S.A. §164 (9) and consistent with the Vermont Comprehensive Assessment System adopted by the State Board of Education in November 1996, as amended from time to time. Public schools shall assess students in accordance with any requirements of law. Students who are unable to participate in district or state assessments shall be given an alternate assessment in accordance with law. Each school shall account for 100 percent of its students in regard to their participation in the state assessments.

2120.2.2 Development and Implementation of Local Comprehensive Assessment System

(a) By September 1, 2006, each school district shall develop a local comprehensive assessment system that:

(1) is aligned with the Framework,

(2) is consistent with the Vermont Comprehensive Assessment System adopted by the State Board of Education in November 1996, as amended from time to time,

(3) enables decisions to be made about instruction, professional development, and educational resources and curriculum, and

(4) employs a balance of classroom-based and school-level assessments.

(b) A school's Local Comprehensive Assessment system shall assess students in those Framework or comparable standards associated with the Fields of Knowledge and Vital Results that are not assessed through the State Assessment System. The following grid is a graphic representation of the requirements of the Local Comprehensive Assessment System.

Local Assessments	K-4	5-8	9-12
Course of Study/ Graduation Requirement/ Framework			
- English Language Arts (including Reading)	✓	✓	✓
- Math	✓	✓	✓
- Science	✓	✓	✓
- Social Sciences	✓	✓	✓

- Arts	✓	✓	✓
- Physical Education	✓	✓	✓
Course of Study/ Framework			
- Comprehensive Health	✓	✓	✓
Framework			
- Technology Education	●	●	●
- World Language		●	●
- Family & Consumer Sciences		●	●
- Design and Technology Education and Technical Education		●	●

✓ Assessment required for all students
- Assessment for participating students (elective)

(c) The performance criteria of the system shall be clear and be communicated to teachers, administrators, students, parents and other community members. Students and parents shall be informed on a regular basis regarding progress toward achieving the standards.

(d) Each school shall develop and adopt policies on grade advancement.

2120.3 Report of Results

Each school shall report student performance results to the community at least annually in a format selected by the school board. In no case shall personally identifiable information on any student be revealed. The report shall at minimum include:

(a) Information indicating progress toward meeting student performance standards from the most recent measures taken,

(b) Information about the health and social well-being of children in the school district,

(c) Information indicating progress toward meeting the annual goals of the action plan,

(d) Any other statistical information about the school or community that the school board deems necessary to place the student performance results in context,

(e) Information about early reading instruction provided under 16 V.S.A. §2903 (c),

(f) Early care and educational opportunities available to children,

(g) Community support available to children,

(h) A description of how the school ensures that each student receives appropriate career counseling and program information regarding education and apprenticeship program offerings at technical centers,

(i) If the school is a secondary school, data describing student participation in technical education, regional job opportunities and the number of graduates from the previous year who have entered post-secondary education, the military, and the job market,

(j) Information and supporting data presented in a manner designed to protect student confidentiality on the following:

(1) student attendance, including unexcused absences,

(2) student discipline, and

(3) if the school is a secondary school, dropout and graduation rates; and

(k) Other data required by law.

2120.4 Needs-Based Professional Development

(a) Each school shall develop and implement a school-wide system of appropriate needs based professional development for all professional staff including administrators and other staff involved in student instruction, including paraprofessionals. The professional development system shall be designed, after research and data collection, to enhance the skills and abilities of staff to improve student performance in relation to the Framework or comparable standards.

(b) The school's professional development system shall be aligned with its staff evaluation and supervision policies, action plan and district-wide goals; provide new professional staff with appropriate training; and put new professional staff members in contact with the local and regional standards boards to establish an Individual Professional Development Plan (IPDP) for the licensure period.

(c) Mentoring shall be a structured component of each school's needs-based professional development system. For the purposes of this subsection, "mentoring" means the pairing of a mentor with an educator who is either new to the profession or new to the school in order to provide training, orientation, assistance and support. Further, for the purposes of this subsection, a "mentor" is an experienced educator who has demonstrated high quality instructional practice and who has been provided training in mentoring. The school board, after reviewing the "Guidelines for Developing Successful Educator Mentoring Programs" recommended by the Vermont Standards Board for Professional Educators (VSBPE), shall determine the specifics of each component of the mentoring program in their school(s).

2120.5 Staff Evaluation

Staff evaluation programs and policies shall be designed and implemented with the goal of improved student outcomes. Such programs and policies shall be consistent with the provisions of 16 V.S.A. §1752(b), shall address the needs of all staff, including administrators, and shall pay particular attention to teachers who are new to the profession and new to the school**,** or are in need of improvement in terms of instructional practice; content knowledge; working relationship with colleagues, parents and community members, and other areas as appropriate. Evaluation shall be provided regularly for all staff beyond any initial two-year period.

2120.6 Access to Technical Education

Schools with grades 9-12 shall offer genuine access to technical education programs. These schools shall ensure that students receive appropriate career counseling and program information regarding the availability of education and apprenticeship program offerings at technical centers. Credits and grades earned in an approved technical education course or in approved technical education program are subject to the requirements of 16 V.S.A. §1545.

2120.7 Federal and State Entitlements; Nondiscrimination

Each school shall ensure that students are furnished educational and other services in accordance with state and federal entitlements.

No student in a public school, nor any student educated through payment of public tuition funds, shall be excluded from participation in, be denied the benefits of, or be subject to discrimination under any educational program or activity receiving federal or state funds as the result of, or based upon, the student's race, gender, color, creed, national origin, marital status, sexual orientation, or solely by reason of handicap or disability, or any other reason set forth in state or federal non-discrimination requirements.

2120.8 Conditions, Practices and Resources of Schools

2120.8.1 School Leadership

The roles and responsibilities of the school's leadership, including the school board, superintendent and principal or technical center director shall be clearly delineated so that there is no duplication of effort or misunderstanding about authority. All school leaders should have sufficient time to carry out their responsibilities in order to focus on improving student learning.

The school leadership shall support teaching and learning by providing for: (1) the safe and orderly management of the school; (2) appropriate professional development linked to the school's action plan; (3) supervision and evaluation of staff; (4) the development,

implementation, coordination and revision of the curriculum; and (5) an environment that inspires academic achievement.

At all levels of leadership, school officials shall encourage parental and other community involvement.

Each school shall employ a licensed principal who shall be responsible for the day-to-day leadership of the school. The principal shall be answerable to the superintendent in the performance of his or her duties.

Schools with 10 or more full-time equivalent teachers shall employ a full-time licensed principal. Schools with fewer than 10 FTE teachers shall employ a licensed principal on a pro-rata basis.

2120.8.2 Staff

(a) All professional staff shall be licensed and appropriately endorsed and shall have had adequate academic preparation and training to teach or provide services in the area to which they are assigned.

(b) At the elementary level, classes in grades K-3, when taken together, shall average fewer than 20 students per teacher. In grades 4-8, when taken together, classes shall average fewer than 25 students per teacher.

(c) At the secondary level, the total class rolls of an English language arts teacher shall not exceed 100 students. In other disciplines, class rolls shall not average more than 150 students per teacher, except where the specific nature of the teacher's assignment, such as in certain art, music, or physical education programs, is plainly adaptable to the teaching of greater numbers of students while meeting the educational goals of the program.

(d) The services of a library-media specialist shall be available to students. Schools with over 300 students shall have at least one full-time library-media specialist and sufficient additional staff to carry out the program. Schools with fewer than 300 students shall employ a library-media specialist in at least an approximate proportion of the number of students in the school to 300.

(e) Each school shall employ sufficient and qualified special education staff as are needed to identify students eligible for special education services and to implement each eligible student's Individual Education Plan and Section 504 plan.

(f) Each school shall employ instructional and administrative staff who possess the knowledge and skills to implement the Framework or comparable standards.
Each school shall use such methods as staffing patterns, scheduling, distance learning, computer technology and partnerships with higher education, businesses and human services agencies to maximize the effectiveness of staff.

(g) To the extent practicable, each school shall take into consideration class size and composition in placing professional staff appropriately in their first two years of employment in the school.

(h) Upon request of a school board, the Commissioner may waive the above class and caseload size requirements where:

(1) necessary to carry out locally-established objectives,

(2) student learning will not be adversely affected,

(3) classroom control will not be compromised, and

(4) it is otherwise in the best interests of student learning.

Unless exceptional circumstances are present, the Commissioner shall respond to such requests within 10 days.

2120.8.3 Comprehensive System of Support Services; Educational Support Team

In accordance with 16 V.S.A. § 2902 and Rule 2194:

(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 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.

2120.8.4 School Counselors

(a) A school counseling program shall be available to all students in grades K-12. At the elementary level, there shall be no more than 400 students per school counselor. Schools with fewer than 400 students shall employ a school counselor at least proportionate to the ratio of the number of students to 400. At the secondary level, there shall be no more than 300 students per school counselor. For purposes of this rule, the term "school counselor" includes the term "guidance counselor."

(b) The school counseling program shall conduct programs that address students' academic, career, personal and social development. Such programs shall be aligned with the work of other professionals in the school setting, as well as those in other educational and human service agencies.

2120.8.5 Health Services

(a) Health services, including health appraisal, counseling, communicable disease control, and emergency and first aid care, shall be made available in a confidential manner students in each school. These health services shall be delivered in accordance with the school district's written policies and procedures which shall be developed in collaboration with parents and community health resources. The school shall comply with requirements of state law relative to vision and hearing screening, immunization, and child abuse reporting, and federal law relating to invasive physical examinations in accordance with the Protection of Pupil Rights Act (20 U.S.C.§1232h, as amended from time to time).

(b) Each school shall engage the services of a person licensed as a School Nurse or Associate School Nurse and shall specify in writing his or her duties. There shall be no more than 500 students per school nurse. Schools with fewer than 500 students shall employ a nurse at least proportionate to the ratio of the number of students to 500. Notwithstanding the ratios set forth above, a school shall provide for sufficient coverage by a School Nurse or an Associate School Nurse to develop individual health care plans (IHPs), train staff on the implementation of IHPs, and ensure appropriate administration of medication.

2120.8.6 Interagency Teams

Schools shall participate in interagency teams as required by 33 V.S.A. §4303 and any other requirement of law.

2120.8.7 Graduation Requirements

(a) Graduation requirements. A student meets the requirements for graduation if, at the discretion of each secondary school board:

(1) the student demonstrates that he or she has attained or exceeded the standards contained in the Framework or comparable standards as measured by results on performance-based assessments; or

(2) the student successfully completes at least 20 Carnegie units, including at minimum the following courses of instruction aligned with the Framework:

(A) four years of English language arts,

(B) three years of science,

(C) three years of mathematics,

(D) three years of civics, history and the social sciences, one year of which shall be in U.S. history and government,

(E) one year of the arts,

(F) one and one-half years of physical education; or

(3) any combination of 1 and 2 above that demonstrates that the student has attained or exceeded the Framework or comparable standards.

Nothing herein shall be construed to prohibit a school board from establishing additional local graduation requirements.

(b) Multi-year Plans. A Multi-year Plan is an individual plan for students with limiting handicaps 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 Multi-year Plans may be made by students, parents, teachers, and guidance personnel, or school administrators.

For students who are eligible for special education (see Rule 2360), a Multi-year Plan shall be considered at a student's Individual Education Plan (IEP) meeting (see Rule 2364.2) 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.

The superintendent or his or her designee shall be responsible for developing the Multi-year Plan and shall determine the extent to which accommodations are made in graduation requirements.

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.

2120.8.8 Instructional Practices

The school shall use a range of research-based instructional practices that most effectively influence student learning as identified by national and Vermont research and any other data locally collected and analyzed. Such approaches shall include opportunities for applied learning, emphasizing the connections between what students learn in school and how that knowledge is used in life experiences both in school and out of school.

2120.8.9 Curriculum Leadership, Content and Coordination

(a) General

(1) Each school's written curriculum shall be:

(A) aligned with the Framework;

(B) coordinated across all grades;

(C) coordinated with the curriculum of other schools within the supervisory union, including between sending high schools and technical centers;

(D) revised as warranted based upon a periodic review of student performance results, learning opportunities data, new research and updated content knowledge; and

(E) designed to meet the needs of all students.

(2) Each school shall provide opportunities, appropriate to age and ability, for students to engage in service learning, to develop leadership skills and to participate in cultural programs. Each school offering education in grades 7-12 shall offer a variety of options such as, but not limited to, athletics, drama, music, student government, peer leadership, journalism, special interest clubs and organizations and community projects.

(3) Each school shall provide appropriate learning opportunities to all students to support their attainment of the standards contained in the Framework. Each school shall provide supplemental learning opportunities to students in all grades who exceed these performance standards.

(4) Each school shall offer a research-based alcohol, tobacco or other drug prevention program, aligned with the Framework, which meets the requirements of 16 V.S.A. § 909 and Rule 4213.1.

(5) Each school shall provide comprehensive health education for all students in accordance with sections 16 V.S.A. §§ 131 and 906(b)(3).

(6) Each school shall integrate technology into their curriculum by December 31, 2006.

(b) Elementary and Middle School Students

(1) Each school which offers kindergarten shall provide at minimum:

(A) a literacy program that includes language and literature components,

(B) instruction in phonological awareness, and

(C) a foundation in mathematics.

(2) The kindergarten program shall be coordinated with the grades 1-6 program and, where applicable, with its early education programs and other early education programs as appropriate.

(3) Each school offering education in grades 1-3 shall provide highly effective, research-based reading instruction to all students designed to enable students to meet standards for third grade reading proficiency by the end of grade 3. For any student whose reading performance falls below the level expected in order to achieve third grade reading proficiency, the school shall work to improve the student's reading skills by providing additional research-based reading instruction to the student, and by providing support and information to parents and other family members.

(4) Each school offering education in grades K-8 shall provide a course of instruction in:

(A) English language arts;

(B) mathematics;

(C) science; and

(D) social sciences, including civics and history and, including learning experiences in Vermont History and government.

(5) Each elementary school offering education in grades K-6 shall provide students with programs at least twice weekly, or the equivalent thereof, in both the arts and physical education.

(6) Each school providing education in grades 7 and 8 shall offer students physical education at least twice weekly, or the equivalent thereof, and one-half year of study

or the equivalent thereof, in each of the following: the arts, family and consumer science, and design and technology education.

(7) Each school offering education in grades K-8 shall provide opportunities for all students to become literate in using educational technology as a tool to enhance their learning by December 31, 2006.

(c) Secondary Students

(1) Each school providing education in grades 9-12 shall offer the equivalent of at least four years of study in each of the following academic areas: English language arts; civics, history and the social sciences; mathematics; science; world languages; the arts; and physical education.

(2) In addition, each school shall:

(A) offer a variety of additional elective courses,

(B) make available courses in family and consumer sciences, business, driver and traffic safety education,

(C) make available courses in technology education (applied learning) and technical education, either in the high school or the regional technical center, and

(D) provide students with opportunities for advanced course work such as Advanced Placement courses and college level courses.

2120.8.10 Educational Materials

Students shall have access to current educational materials, including textbooks that support students in meeting or exceeding the Framework or comparable standards.

2120.8.11 Library

Each school shall adopt and maintain a written plan that:

(a) provides for the planned growth of library media resources.

(b) ensures that students, teachers, administrators and paraprofessionals have access to an organized collection of print and non-print materials sufficient and appropriate to support all students in meeting or exceeding the Framework or comparable standards.

(c) provides students access to the library on a regular basis to use materials for reading, research and training in the skills needed to use the library effectively.

(d) ensures that the classroom curriculum is supported by necessary print and non-print materials.

(e) ensures that students are afforded the opportunity to learn the skills to locate, evaluate, synthesize and present information and ideas in the context of specific subject areas.

(f) addresses the selection of library materials and a process for handling complaints.

2120.8.12 School Facilities and the Learning Environment

(a) Each school shall maintain a safe, orderly, civil and positive learning environment, which is free from hazing, harassment and bullying and based on sound instructional and classroom management practices and clear discipline and attendance policies that are consistently and effectively enforced.

(b) The design and operation of the school facilities shall be in full compliance with all state and federal fire, health, safety and architectural standards.

(c) The learning environment shall be free from overcrowding and students shall not be subject to environmental distractions or dangers.

(d) Each school's comprehensive plan for responding to student misbehavior, as required by 16. V.S.A. §1161a(a), shall address student behavior, language, classroom attendance, clothing and treatment of property, as well as consequences for violations of policy and shall be clear and consistently enforced. Each school shall observe due process requirements as set forth in Rule 4300 et seq.

(e) Each school shall develop and implement a system of maintaining student records that aligns with Department of Education data collections and which enables accurate and timely reporting in connection with state and federal data collection requirements, and insures the accuracy, relevancy and confidentiality thereof, and accessibility thereto, and which is in compliance with the federal Family Education Rights and Privacy Act of 1974 (P.L. 95-380 as amended from time to time). Student records shall be safely stored. For grades 9-12, the transcripts of graduates and dropouts shall be permanently maintained and the academic records may be permanently maintained.

(f) Each school shall adopt and implement policies consistent with the federal Protection of Pupil Rights Act (20 U.S.C. §1232h as amended from time to time) regarding surveys, analyses and evaluations.

2120.8.13 Access to Current Technology

Each school shall:

(a) provide access to a variety of up-to-date information, assistive, and other technology to support students in meeting or exceeding the standards contained in the Framework or comparable standards,

(b) provide access to state and national learning resources through electronic information sources, and

(c) adopt and implement written policies on electronic resources, acceptable Internet usage, and procedures for handling complaints.

2121 Variance

Upon written request of a school board, and after opportunity for hearing, the State Board of Education may approve an alternative method for meeting the requirements of Rule 2120.8 –2120.8.13 when:

(a) the alternative method is consistent with the intent of the rule;

(b) the variance permits the school board to carry out locally-established objectives; and

(c) the granting of the variance does not contravene any state or federal law, any federal regulation, or any rule of any state agency other than the State Board of Education, unless such rules themselves permit the granting of a waiver or variance.

2122 System for Determining Compliance with School Quality Standards

2122.1 Filing of School Quality Status Report

By June 30, 2006, principals of public schools and headmasters of any independent school participating in the School Quality Standards process shall complete and return to the Commissioner a status report designed to determine each school's compliance with the School Quality Standards

The form, to be completed, shall include a statement of the Standard; a checklist of significant requirements under the Standard; and questions on particular standards where appropriate to elicit information on manner and degree of compliance with the Standard.

In the case of an independent school participating in the School Quality Standards process, the information on the form shall be attested to by the headmaster. In the case of a public school, the information on the form shall be attested to by the superintendent, the principal and the school board chair.

2122.2 Further Review; Commissioner's Recommendation; State Board Action

(a) Each year, the Commissioner shall, through a process of stratified random sampling, determine the 30-50 schools that will be visited by a Department of Education-led team to further review compliance with the School Quality Standards.

(b) If after reviewing the report of the visiting team, the Commissioner determines that a school does not substantially meet the School Quality Standards, he or she shall describe

in writing the specific School Quality Standards found to be unmet and the specific actions that a district must take in order to come into compliance. The Commissioner's notice shall also describe what technical assistance shall be provided. The Commissioner shall afford the school district an opportunity for hearing on the determination. The Commissioner's decision shall be final.

(c) If the school fails to meet the School Quality Standards by the end of the next two-year period, the Commissioner shall recommend to the State Board one or more of the following actions:

(1) Continue technical assistance,

(2) Adjust supervisory union boundaries or responsibilities of the superintendency,

(3) Assume administrative control of the school or portion thereof but only to the extent necessary to correct deficiencies, or

(4) Close the school and require that the school board pay tuition to another public school or an approved independent school pursuant to Chapter 21 of Title 16.

(d) In the case of an independent school seeking to meet School Quality Standards, such school may receive technical assistance but shall not be subject to subdivisions (c) (2)-(4) of this section. The independent school may continue to be designated an independent school meeting the School Quality Standards unless and until the State Board, after an opportunity for a hearing, finds that:

(1) the school has discontinued its participation in the School Quality Standards process; or

(2) the school fails to substantially meet the School Quality Standards after two or more years following the initial determination.

(e) The State Board, after offering the school board an opportunity for a hearing, shall either dismiss or affirm the Commissioner's recommendation or order that one or more of the actions listed in subdivision (c) (1)-(4) of this section be taken.

2123 Effective Date

These rules, except as otherwise specified herein, shall become effective on 15 days after adoption is complete in accordance with 16 V.S.A. §845 (d).

June 19, 2001

Rules 2150 – 2161 are added to the State Board of Education Manual of Rules and Practices, and rules 2122.3 and 2123.2 are amended as follows:

2150 Governor's Diploma

2151 Statutory Authority: 16 VSA §§164(7) and (9), and 179

2152 Statement of Purpose

The purpose of these rules is to implement the provisions of 16 V.S.A. §179 in such a manner as to enable Vermont students to demonstrate a high level of academic achievement. A student's achievement shall be demonstrated by: (1) earning a high school diploma or enrollment in a home study program, in accord with 16 V.S.A. 166b, during the school year when he or she receives the Governor's Diploma, and (2) a high level of performance, as described in these rules, on a series of examinations in English/language arts, mathematics, science, and social studies, and, if approved by the State Board of Education, in other academic areas. Award of a Governor's Diploma under these rules shall signify that a Vermont student has achieved or achieved with honors designated standards established in *Vermont's Framework of Standards and Learning Opportunities.*

2153 Definitions

"Commissioner" means the Commissioner of the Vermont Department of Education or his or her designee.

"Examinations," except as otherwise set forth in 2157, means standards-based examinations in English/language arts, mathematics, science, and social studies. The Commissioner shall select particular assessments on which eligibility for the Governor's Diploma shall be based.

"Framework" means *Vermont's Framework of Standards and Learning Opportunities,* adopted by the Vermont State Board of Education in Spring 1996, amended in September 1998 and May 2000, and as amended from time to time.

"Headmaster" means the person responsible for the management of an independent school.

"Secondary School" has the same meaning as set forth in 16 V.S.A. §11(a) (5).

"Student" means, as the context requires, the student or his or her parent or guardian.

"Technical Advisory Panel (TAP)," is a panel formed by the Department of Education and is composed of state and national experts in measurement of

educational attainment. It is charged with the responsibility to ensure that Vermont's Comprehensive Assessment System is technically sound.

"Vermont Student" means an individual who is:

(a) a resident of Vermont who is enrolled in a public or approved independent secondary school in Vermont, in the Adult Diploma Program, or in a public secondary school located in another state that is within a Vermont interstate school district; or

(b) a resident of Vermont who is enrolled in a program of home study pursuant to 16 V.S.A. §166b; or

(c) a non-resident of Vermont who is enrolled in a public or approved independent secondary school in Vermont which offers state assessments to its students; or

(d) a resident of Vermont who, pursuant to an Individual Education Plan (IEP), is placed in a residential school in or outside Vermont.

"Vermont Comprehensive Assessment System" means the Comprehensive Assessment System adopted by the Vermont State Board of Education in November 1996, as amended from time to time. As used in these rules and for purposes of the Governor's Diploma only, Advanced Placement (AP) and SAT II social studies tests shall be considered to be part of the Vermont Comprehensive Assessment System.

2154 Eligibility and Opportunity to Take Examinations

Vermont students shall be eligible to receive the Governor's Diploma based on examination results from the following opportunities:

(a) For Vermont students enrolled in Vermont public secondary schools or in independent secondary schools receiving public tuition funds, the first opportunity to take examinations leading to the award of a Governor's Diploma shall be the regular administration of the Vermont Comprehensive Assessment System examinations in English/language arts, mathematics, and science, and in the scheduled administration of SAT II and AP examinations in social studies. Other Vermont students shall be responsible for making arrangements to take the examinations as set forth in Rule 2158.3 (b). For students placed outside the school district of residence pursuant to an Individual Education Plan (IEP), opportunities to take the examinations shall be arranged, on request of the student or parent, by the district of residence.

(b) Vermont students who have already reached the level of "achieving the standard" on any of the state assessments described in (a) of this rule may also take a regular administration of Advanced Placement (AP) and Scholastic Assessment Test II (SAT II) examinations approved by the Commissioner for purposes of determining eligibility for the Governor's Diploma with Distinction in English/language arts, mathematics, science, and social studies. Students shall notify the commissioner, on a form prepared by the Department of Education, of this intention, and shall ensure that the commissioner receives official results of the examinations.

(c) A Vermont student shall have two opportunities to take examinations in the Vermont Comprehensive Assessment System in each of the four qualifying academic areas described in (a) of this rule, and in any additional areas approved by the commissioner in accord with Rule 2157, leading to the award of a Governor's Diploma. A Vermont student shall also have an additional two opportunities to take examinations in those four qualifying academic areas for the purposes of attempting to receive the Governor's Diploma with Distinction as described in (b) of this rule.

(d) A Vermont student intending to take an examination a second time may do so through the regular administration of Vermont's Comprehensive Assessment System and/or through a regular administration of approved AP and SAT II examinations. Responsibility for notifying the school where the examination is to be taken within the time period announced each year by the commissioner shall rest with the student. For AP and SAT II examinations, students shall notify the commissioner, on a form prepared by the Department of Education, of this intention, and shall ensure that the commissioner receives official examination results.

2155 Examination Standards and Criteria for Award of a Governor's Diploma

(a) A Governor's Diploma shall be awarded to a Vermont student who:

(i) achieves designated Framework standards in English/language arts, mathematics, science, and social studies, by receiving qualifying test scores determined by an objective panel appointed by the Commissioner for that purpose; and

(ii) except as provided for Adult Diploma Program students in Rule 2160, receives a high school diploma or, in the case of a home school student, is enrolled in a home study program during the last year in which the student achieves designated standards by receiving qualifying scores.

(b) On all qualifying examinations for the Governor's Diploma, modifications, accommodations and, if available, alternate assessments shall be provided

for students as required by the student's Individualized Education Plan (IEP), Section 504 Plan, or Limited English Proficiency Plan, or for a student with disabilities without an IEP or 504 Plan. Such modifications, accommodations and alternate assessments, however, shall neither result in any diminution of the standards to be achieved nor invalidate the examination.

2156 Governor's Diploma with Distinction

A Vermont student shall qualify for a Governor's Diploma with Distinction if he or she, in addition to meeting the requirements of Rule 2155 (a):

(a) achieves with honors designated Framework standards by receiving qualifying test scores determined by an objective panel appointed by the commissioner for that purpose in at least one of the four academic areas included in Rule 2155 (a) (i); or

(b) achieves with honors designated Framework standards by receiving qualifying test scores determined by an objective panel appointed by the commissioner for that purpose in additional academic areas approved by the State Board of Education in accord with Rule 2157, including, but not limited to, art, music, technical fields, and foreign languages.

2157 Approval by State Board of Additional Examinations

Upon the recommendation of the commissioner, the State Board of Education may designate additional examinations in the four core academic areas, English/language arts, mathematics, science, and social studies, and in additional academic areas, including – but not limited to – art, music, foreign languages, and technical fields. Such designation may occur only after the TAP assures both its validity and reliability for this purpose and its consistency with the Framework, and provided that schools and students are notified at least one year before a new academic area is included for the Governor's Diploma.

2158 Administration of Examinations

2158.1 Responsibilities of Commissioner

(a) By September 1, 2001 and each September 1 thereafter, the Commissioner shall inform each secondary school principal and headmaster, and the parent or guardian of each enrolled home-study student over the age of 13 of:

(i) the opportunity for students to obtain a Governor's Diploma,

(ii) the schedule for administration of examinations,

(iii) the responsibilities of students, parents, principals, headmasters and home-study students and parents with respect to the administration of and participation in the Governor's Diploma,

(iv) the standards upon which student performance will be examined, and

(v) the criteria and method by which students shall be reimbursed for the costs of AP and SAT II examinations as provided for in Rule 2159 (b) and (c), and for other costs that may be incurred by students seeking to receive the Governor's Diploma with Distinction through examinations in additional academic areas approved under Rule 2157.

(b) For examinations administered through the Comprehensive Assessment System (with the exception of social studies), the commissioner shall ensure the delivery of examinations to each school administering them, accompanied by clear written instructions as to:

(i) security of the examinations prior to, during and after administration,

(ii) accounting for all examinations,

(iii) record keeping,

(iv) permissible and impermissible actions by examination proctors during administration, and

(v) manner and timing of administration and return of the examinations.

(c) The commissioner shall establish a system for ensuring that Vermont public secondary school principals are notified of students' examination results in relation to the qualifying test scores.

(d) The commissioner shall establish a separate system for notifying Vermont students not attending Vermont public schools whether they meet the requirements for a Governor's Diploma. The system shall specify that it is the responsibility of the student to document for the Commissioner that he or she has received a high school diploma, and that it is the responsibility of home study students to document for the Commissioner that they have been enrolled in a home study program, as set forth in 16 V.S.A. §166b, during the year in which they receive a Governor's Diploma.

(e) The commissioner shall establish and oversee a timely, fair and efficient method for reviewing, on request, the test scores of a student who does not achieve the standards or achieve the standards with honors described in Rule 2155 (a) (i) and Rule 2156 (a) and (b). Such requests for review shall be made in writing within 30 days of receiving the scores. The commissioner's decision shall be final.

(f) Students who miss an examination that is part of the Comprehensive Assessment System due to unavoidable circumstances, such as, but not limited to, a verified short term medical illness, chronic condition, or family emergency, shall be permitted to request special arrangements through the commissioner for an additional testing opportunity.

2158.2 Responsibilities of School Officials

(a) The principal or headmaster of a secondary school administering the examinations, or his or her designee, shall be responsible for:

(i) Notifying in a timely manner all eligible students, as described in Rule 2154, of the examination schedule,

(ii) security of the examinations before, during, and after administration,

(iii) ensuring the administration of the examination in a manner consistent with the Commissioner's instructions,

(iv) assigning appropriate staff to administer the examinations,

(v) ensuring staff administering the examinations are trained in accord with specific test protocols,

(vi) requiring staff to sign an assurance after administration of the examination to the effect that it was administered in accord with specific test protocols, law, these rules and the instructions issued by the commissioner, and

(vii) creating and maintaining records of the administration of the examinations which, at minimum, shall include:

(A) the names of the students who took the examination,

(B) the names of the students who completed the examination,

(C) the date the examination was administered,

(D) the assurance described in subdivision (a)(vi) above, and

(E) a description and explanation of any irregularities that may have occurred during the administration of the examination,

(viii) notifying students and parents of the examination results and the method and timing for requesting a review of scores by the commissioner,

(ix) informing the commissioner by May 1 of each year of those students who may meet the requirements for an award of a Governor's Diploma,

(x) ensuring that students who receive a Governor's Diploma are publicly recognized at the school's graduation ceremony if the examination results are known, and

(xi) providing a final list to the Commissioner, by September 1 of each year, of those students who have received a Governor's Diploma.

2158.3 Where the Examinations are to be Administered

(a) If a student is enrolled in a Vermont school that administers the examinations**,** or in a public secondary school located in another state that is within a Vermont interstate school district that administers examinations, the student shall take the examination at that school. Students enrolled in technical centers may take examinations at the center if the center administers them, or at their sending school.

(b) If the student is enrolled in a home study program or is enrolled in an independent school in Vermont or outside Vermont, or in a public school outside Vermont that does not administer the examinations, the student may take the examinations at any Vermont site that administers them. The student or the student's parent or guardian shall be responsible for making the arrangements by October 1st of the school year during which testing will be done.

(c) If a student is placed outside the school district of residence pursuant to an Individualized Education Plan, the school district shall arrange for the administration of the examinations.

(d) In accord with Rule 2160, students enrolled in the Adult Diploma Program may take examinations through regular or special administrations of assessments in the Comprehensive Assessment System and regular administration of SAT II and AP tests.

2159 Payment of Examination Costs

(a) For examinations within the Comprehensive Assessment System, the commissioner shall pay the costs of the first and second administration of the examinations for Vermont students. For those students who have achieved the standard on examinations in the Comprehensive Assessment System, and who intend to seek the diploma with distinction in accord with Rule 2154 (b), commissioner shall pay the costs of up to two additional administrations. Costs shall include those for administration, scoring and reporting of scores.

(b) For up to two administrations of AP and SAT II examinations taken for the purpose of attaining the Governor's Diploma with Distinction in each of the areas of English/language arts, mathematics, science, and social studies in accord with Rule 2154 (b) and (c) the commissioner shall reimburse costs for students who meet federal criteria for eligibility for free and reduced price lunches. The commissioner shall include information about the reimbursement system in the material distributed in accord with Rule 2158.1 (a) (v).

(c) If the commissioner approves examinations in additional academic areas under Rule 2157, he or she shall pay the costs of two administrations for students who meet federal criteria for eligibility for free and reduced price lunches. The commissioner shall include such provisions in the material distributed in accord with Rule 2158.1 (a) (v).

2160 Adult Diploma Students

Any student enrolled in the Adult Diploma Program shall be eligible for the opportunity to achieve the Governor's Diploma. The commissioner shall ensure that such students shall be notified of the opportunity to take examinations through regular or special administrations of assessments in the Comprehensive Assessment System and regular administration of SAT II and AP tests.

Students who intend to take examinations a second time up to one year after receiving their high school diploma, having been notified by the Adult Diploma program of this opportunity pursuant to Rule 2154 (c), shall inform the commissioner of their intention. The commissioner shall ensure that such students shall have the opportunity to take the examinations. The accommodations and payment provisions of Rules 2155 (b) and 2159 shall apply to Adult Diploma students.

2161 Effective Date of Rules and of the Governor’s Diploma

These rules shall be effective on September 10, 2001. The first year students shall be eligible to receive the Governor’s Diploma shall be in school year 2002-2003.

2194 Educational Support System Effective: 9/17/07

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.

8/16/2001

2195 Grant Applications for Inservice Training Funds

(1) On April 15th of each fiscal year through fiscal year 1995, the Commissioner 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.

(1) Applications must be filed by May 15th on a form prescribed by the commissioner.

(2) 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 regular 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.

8/16/2001

2200 EVALUATION OF PRIVATE EDUCATION PROGRAMS

2210 (vacant)

INDEPENDENT SCHOOL PROGRAM APPROVAL

2220 Approval of Independent Elementary and Secondary Schools

Statement of Purpose

The purpose of independent school approval rules is to assure acceptable educational opportunities for students enrolled in Vermont's independent schools.

2221 Statutory Authority: 16 VSA §166 and 16 VSA §2958(e)

2222 Procedure

Every person or entity desiring to operate an approved independent elementary or secondary school shall apply in writing to the Commissioner of Education. Independent schools which are recognized as provided for in 16 VSA §165a rather than approved are not required to comply with the procedures set forth in this section. An application shall meet the requirements of 2225 below.

Upon receipt of an application for initial approval or renewal of approval, the commissioner shall appoint a review committee of at least two persons.

The process below (2222.1 to 2222.7) shall be followed.

2222.1 Visit. The review committee shall visit the school. To the extent possible, the visit shall be coordinated by the commissioner with other agencies of state government which inspect such facilities.

2222.2 Report. The committee shall present a written recommendation regarding approval to the commissioner. A copy of their recommendation shall be provided at the same time to the applicant. The applicant shall be given 30 days to respond before a recommendation regarding approval is made by the commissioner to the state board. The report shall contain the findings of other agencies of state government which inspect such facilities.

2222.3 Review. The commissioner shall designate a date for action by the board. Officials of the school shall be notified of this date.

2222.4 Renewal. Not less than six months prior to expiration of a school's approval, the commissioner shall send an application packet and a letter notifying the school when the site visit will occur and that the completed application must be received from the school not later than 30 days prior to the scheduled site visit.

2222.5 Extension. Approval of a school completing timely application for further approval shall extend until the board acts on further approval.

2222.6 Termination. Approval of an independent school which fails to complete timely application for further approval shall terminate on the date specified in the most recent approval action.

2222.7 Denial, Revocation or Suspension of Approval.
Prior to recommending denial, revocation or suspension of approval, the commissioner shall obtain the written recommendation of the Council of Independent Schools. If after receiving the Council's recommendation the commissioner determines that denial, revocation or suspension of approval is warranted, s/he shall notify the school of the reasons for the proposed action and shall afford the school an opportunity to be heard by the board. Approval of an independent school shall be revoked or suspended by the board based on a finding that the school no longer meets the criteria for approval listed in Section 2226.

2222.8 Investigations. Reports or complaints to the commissioner concerning matters related to the approval standards shall be investigated if it appears such action is warranted. The school shall receive notification of the complaint unless contraindicated by the particular facts. A review team of at least two persons shall be appointed by the commissioner including a member of the Council of Independent Schools. The team will conduct the investigation after initial inquiries and will inform the school of the results. Reports of drug or alcohol use shall be referred to the state's attorney for the county in which the school is located. Reports of child abuse or neglect shall be reported to the Department of Social and Rehabilitation Services. Reports concerning the safety of facilities, water supply, electricity, plumbing or waste disposal systems shall be referred by the department to the appropriate public agency.

2223 Reciprocity

Approval may be granted without committee evaluation and the approval process in the case of any school accredited by a state or regional agency recognized by the State Board for accrediting purposes. Such accrediting agencies are listed in Rule 7320 of the board Manual of Rules and Practices. Any accreditation from a recognized accrediting agency that is valid for more than five years must be supplemented with an interim report from the accrediting agency which should be submitted to the Department of Education by the accrediting agency or the school during the last year of its five-year approval. This interim report must provide such information as is necessary to assure the State Board that the school is meeting the approval standards. If such proof of compliance with approval standards cannot be shown, the school must undergo the approval process.

2224 Tuition from Public Funds

2224.1 Tuition may not be paid from public funds to any elementary or secondary school not approved by the board.

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.; or

(b) there is an order from a court or from a due process hearing pursuant to Rule 2364.3.5 requiring such payment.

2224.3 In order for tuition to be paid to an independent school in another state, the school must be accredited or approved by the host state or by an accrediting agency recognized by the state board. The state board reserves the right to refuse payment of tuition, if after review it determines any such school does not provide the minimum course of study, is unsafe, or does not have faculty qualified by training and experience in the instructional area in which they are assigned.

2225 Application

An application for initial approval or renewal of approval shall contain the following:

2225.1 The name and address of the school.

2225.2 A statement of the school's philosophy and purpose.

2225.3 A description of the school enrollment including a statement of whether it is designed to serve children with a particular disability or with disabilities generally.

2225.4 A description of the plan of organization for the school including its governance, faculty, and student body, and the names and addresses of the governing board.

2225.5 A description of the curriculum, methods of instruction, evaluation procedures and special services which the school has designed to achieve its educational objectives and to provide a minimum course of study as defined in 16 VSA §906.

2225.6 A description of physical facilities including plant, materials and equipment and assurances that the facilities meet all applicable state and federal requirements.

2225.7 Evidence of compliance with local, state and federal requirements pertaining to the health and safety of pupils.

2225.8 Statements regarding professional staff including:

2225.8.1 Professional Staff Qualifications

(1) A job description for each position or a statement describing training, experience and degree(s) required for each position.

(2) A resume, vita or description of appropriate qualifications for each current professional staff member.

(3) Current assignment of each professional staff member.

2225.8.2 Professional Staff Development

(1) A general statement of the institution's expectations for professional growth of staff.

(2) A statement describing the school's inservice training and financial and other support given to staff for professional development; and

(3) A description of professional development in the prior two years.

2225.8.3 Professional Environment

(1) A list of staff and length of service.

(2) A description of staff meetings.

(3) A description of other staff duties that are not related to teaching or administration duties.

2225.9 Evidence of financial capacity may be shown by one of the following:

(1) An audit letter by a certified accounting firm from the present or prior year describing financial capacity;

(2) A notarized letter summarizing the financial status within the present or prior fiscal year signed by the board of directors or governing body;

(3) An audit from the present or prior fiscal year performed by a certified accounting firm; or

(4) A statement of financial capacity of a private, state, or regional agency recognized by the state board for accrediting purposes concerning the school's financial capacity.

2225.10 The school calendar.

2225.11 Copies of publications for distribution to applicants for admission including the statement required by 16 VSA §166 (b) (3).

2226 Approval

The board may approve an independent school if it finds that:

2226.1 The description of the school in the approval application is accurate.

2226.2 The course of study offered is adequate to meet the educational purposes of the school and to provide a minimum course of study that is age and ability appropriate.

2226.3 The school has available support services necessary to meet the requirements of a minimum course of study and its educational purposes, including but not limited to library sciences, administrative services, guidance and counseling services and a system of records by which pupil progress may be assessed.

2226.4 The school has classroom, laboratory, library and other facilities necessary to operate its program.

2226.5 The school employs professional staff who are qualified by training and experience in the areas in which they are assigned as measured by the following:

2226.5.1 For teachers, a minimum of a bachelor's degree in their field of instruction or substantially equivalent time in training and experience in their field of instruction.

2226.5.2 For all professional staff, relevant experience and/or training in other programs not related to teaching or administrative duties to which they are assigned.

2226.6 The school has an adequate program of continuing professional staff development as demonstrated in the application.

2226.7 The school employs a sufficient number of professional staff of the population served.

2226.8 The school satisfies lawful requirements relative to its facilities, fire drills, and the immunization of its pupils against disease.

2226.9 The school maintains a register of the daily attendance of each of its pupils and meets the requirements of law regarding the reporting of its enrollment.

2226.10 The school maintains an operating schedule that includes a total number of instructional hours each year which is not less than that required of a public school serving the same grades.

2226.11 The school has the financial capacity to carry out its educational purpose for the period of approval.

2227 Length of Approval

The board may grant initial approval for a period of not more than two years, and renewal of approval for not more than five years.

2228 Special Education Approval of Independent Schools

2228.1 (1) In order for an in-state independent school to receive approval for purposes of Rules 2224.2 and 2228.2 and 16 VSA §2958 (e), it must 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 Rule 2362.1, 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 must 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 (1) Placement Prohibition

No responsible agency, as defined by Rule 2360.2 shall make a special education placement in an independent school that has not been approved for special education purposes unless the placement is pursuant to:

(a) a subsection (2) of this rule,

(b) a court order, or

(c) a due process order pursuant to Rule 2364.3.5.

Nor shall such 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.

(2) Exceptional Circumstances – Approval Process

Upon application by a responsible agency, the commissioner 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, Rule 2366.2.2(7) notwithstanding, in instances in which the commissioner 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 commissioner's decision may file an appeal with the State Board of Education pursuant to 16 VSA §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 commissioner may specify conditions under which the placement is to be carried out.

2228.3 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 commissioner, in accordance with 16 VSA §2948, the agreement shall be

with the Commissioner 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 commissioner, 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 commissioner.

(2) Application for special education approval shall be submitted in writing to the commissioner in accordance with the format prescribed by the commissioner.

(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 After receiving approval for special education purposes, an independent school shall notify the commissioner of any significant changes to its special education program, professional staff, governance, financial capacity or facilities. The commissioner may, upon such notification, gather additional information from the school, including by means of a site visit. As a result, the commissioner may return to the state board for a change in the school's approval for special education purposes. If the commissioner 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 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 VSA §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 commissioner 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 commissioner shall review each special education approved independent school's annual rate report. If the commissioner 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 commissioner shall make a determination as to the maximum rate that public schools and the State Department 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 Department would pay is not adequate. If the explanation is not satisfactory to the commissioner, 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 commissioner, 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 Department

(a) To have a new rate approved for the ensuring school year, an independent school shall submit a request for rate approval with supporting documentation to the Department prior to November 15. The commissioner 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 commissioner 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 VSA §828

2230.1 "Tutorial program" means education provided to a pupil who is placed in a short-term program that is not administered by a school district. 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 VSA §166. The average length of stay for students in a tutorial program shall be not more than six months. The commissioner 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 commissioner shall appoint a committee of at least two persons to review the application and visit the tutorial program.

2230.2.3 Report to the Commissioner

The appointed committee shall present a written recommendation regarding possible approval to the commissioner. 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 commissioner to the State Board of Education.

2230.2.4 Board Action

The Commissioner 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 must be approved prior to receiving tuition payments from a public school district.

2230.2.6 Renewal

Not less than three months prior to expiration of a tutorial program's approval, the commissioner shall send an application packet and a letter notifying the program when the site visit will occur. The completed application must 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 commissioner 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 school district 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 school district.

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 must 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 school district, including credit for coursework for high school and coordinates with other responsible agencies such as Social and Rehabilitative Services, Community Mental Health Centers, and Family-Parent Child Centers by:

2230.3.10.1 Contacting the responsible school district(s) (see 16 VSA §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 school district, 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 school district 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 school district 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 commissioner 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 commissioner shall review each tutorial program's annual rate report. If the commissioner concludes that a tutorial program's rates are not reasonably related to the services provided, the commissioner shall make a determination as to the maximum rate that public schools and the State Department 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 Department would pay is not adequate. If the explanation is not satisfactory, the commissioner shall refer the matter to the State Board of Education.

2230.4.3.1 Upon such referral by the commissioner, 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.

2231 DISTANCE LEARNING SCHOOLS

2231 Approval of Distance Learning Schools

2232 Statutory Authority: 16 VSA Section 166 (b) (6)

2233 Definition
A "Distance Learning School" means an independent school which offers a program of elementary or secondary education through correspondence, electronic mail, satellite communication or other means and which, because of its structure, does not meet some or all the rules of the State Board for approved independent schools.

2234 Procedures and standards
The distance learning school shall meet the procedures and standards set forth in rules 2220-2227, above, which because of its structure can be applied, and the following rules:

2234.1 The distance learning school's business and administrative offices are located in Vermont and are sufficient to meet the needs of the school.

2234.2 The distance learning school follows Vermont requirements for incorporation pursuant to Titles 11, 11A, and 11B of Vermont Statutes Annotated.

2234.3 The distance learning school offers an educational program which is developed and assessed by staff who are other than the parent of the students and who are either employed by the school or under contract with the school.

2234.4 The distance learning school has policies and procedures to:

(1) Enroll students who reasonably can be expected to benefit from the instruction offered by the program, and

(2) Measure student progress to ensure that students continue to benefit from such instruction.

2234.5 The distance learning school has policies and procedures to answer student and parent inquiries about programs and services promptly and satisfactorily and to answer specific student academic inquiries in a timely and beneficial way.

2234.6 The distance learning school has policies and procedures for informing students and parents of academic progress on a regular basis.

2234.7 Tuition

2234.7.1 Tuition policies, including tuition collection practices, are written, clear, and provided to parents in advance of enrollment.

2234.7.2 The distance learning school has clear written policies on refunds of tuition payments for circumstances in which students choose not to or are unable to complete the program of instruction.

2234.8 In the event that the school closes, the distance learning school has policies for:

(1) tuition adjustment or refund, and

(2) Preservation and release of student records.

2240 POST-SECONDARY SCHOOLS August 1991

2240 Certification of Post-Secondary Schools

2240.1 Definitions

2240.1.1 "Post-secondary school" means any person who offers or operates a program of college or professional education for credit or degree. Significant changes to an existing post-secondary school such as changing from an associate to an undergraduate degree program, or adding a new graduate degree program shall be considered the operation of a post-secondary school for the purposes of registration and certification.

2240.1.2 "A post-secondary school whose primary operation is in the State of Vermont" means a post-secondary school which offers the majority of its courses in an institution in Vermont or which maintains it principal administrative offices in Vermont and offers post-secondary courses in Vermont.

2240.1.3 "Confer a degree" and "degree-granting authority", for the purposes of these rules, mean the act of conferring and the authority to confer a degree to a student who has completed the requisite coursework and other requirements in a post-secondary school doing business in Vermont. An out-of-state post-secondary school which offers more than seventy-five percent of its credit hours toward a degree in its Vermont affiliate must obtain a certificate of degree-granting authority in Vermont before it may confer or offer to confer a degree.

2240.1.4 "Business organization" for the purposes of 16 VSA §176 (d) (1), may include a corporation if the program of education is provided solely for the employees or invitees of the corporation.

2241 Certification of Vermont-Based Post-Secondary Schools

2241.1 Statutory Authority: 16 VSA §176

2241.2 Registration

Any person who desires to operate a post-secondary school in Vermont, which shall have its primary operation in Vermont, shall file with the commissioner prior to commencing operation a statement of intent to operate which shall include the following information:

(a) Name, location and legal nature of the school including affiliations with other organizations, if any.

(b) Name and title of the chief administrative official.

(c) Operating calendar of the school.

(d) A concise description of the program(s) to be offered.

(e) A description of the proposed student body including a projection of the size and level of education at admission.

(f) After July 1, 1991, assurance that each applicant for enrollment is notified, in writing, on an application, enrollment or registration form to be signed by the applicant, that credits earned at the school are transferable only at the discretion of the receiving school.

(g) If the school is to offer credit or degree by correspondence, proof of a correspondence license.

(h) A notice to applicants for enrollment that the school does not possess degree-granting authority.

2241.3 Application for Certification of Approval

A person desiring a certificate of approval from the State Board of Education shall file an application with the commissioner within eighteen months after admitting the first student. A person may file an application for a certification of degree granting authority at any time but may not operate beyond eighteen months after admitting the first student unless an application for a certificate of approval has been filed. The application shall indicate the certification sought and shall include a description of the school which contains the following:

(a) The name, location and legal nature of the school including a copy of the articles of association or other documents descriptive of the legal nature of the school.

(b) The credits or degree(s) which the school proposes to offer.

(c) The time schedule by which the school intends to implement the program for which certification is sought.

(d) The purpose and philosophy of education of the school.

(e) The organization of the school including a description of its governance, administration and affiliation with other organizations for the provision of services or programs.

(f) A description of the financial resources and policies of the school, including its present and anticipated future assets, sources of funding and revenue, start-up costs for proposed programs and operating budget. Assets and income and expenditures for the school's prior fiscal year shall be presented in an audited financial statement prepared by a certified public accountant.

(g) The school's policy regarding refund of tuition and fees collected in advance from students.

(h) A description of the school's plant, library and equipment.

(i) A description of academic programs including their level, site and length. The application shall set forth, if any, the minimum credit requirements.

(j) A statement regarding the school's professional staff including its policy regarding appointment, promotion, tenure, if applicable, dismissal, the qualifications of professional staff, teaching and student loads, and the numbers of full-time and part-time and adjunct staff and their non-teaching responsibilities.

(k) A description of the student body including its size and level of education at admission, methods of recruitment, and available financial aid resources.

(l) A copy of all catalogues or brochures publicly distributed by the school and a copy of advertisements sponsored by the school to recruit students or solicit funds.

(m) If the school is to offer credit or degree(s) by correspondence, proof of a correspondence license.

(n) After July 1, 1991, evidence that each applicant for enrollment is notified, in writing, on an application, enrollment or registration form to be signed by the applicant, that credits earned at the school are transferable only at the discretion of the receiving school.

2242 Certification of Post-Secondary Schools Doing Business in Vermont Whose Primary Operation Lies Outside of Vermont

2242.1 Statutory Authority: 16 VSA §176a

2242.2 Application for Certification of Approval

A person desiring a certificate of approval from the State Board shall file an application with the Commissioner prior to admitting students. A person may file an application for a certification of degree granting authority at any time but may not admit students without having received a certification of approval and may not confer or offer to confer a degree without having received a certificate of degree granting authority unless exempt under rule 2240.1.3. The application shall indicate the certificate sought and shall include a description of the school which contains the following:

(a) The name, location and legal nature of the school including a copy of articles of association or other documents descriptive of the legal nature of the school.

(b) The credits or degree(s) which the school proposes to offer.

(c) The time schedule by which the school intends to implement the program for which certification is sought.

(d) The purpose and philosophy of education of the school.

(e) The organization of the school, including a description of its governance, administration and affiliation with other organizations for the provision of services or programs.

(f) A description of the financial resources of the school, including its present and anticipated future assets, sources of funding and revenue, start-up costs for proposed programs and operating budget. Assets and income and expenditures for the out-of-state school's prior fiscal year shall be presented in an audited, financial statement prepared by a certified public accountant.

(g) The school's policy regarding refund of tuition and fees collected in advance from students.

(h) A description of the school's plant, library and equipment.

(i) A description of academic programs including their level, site and length. The application shall set forth, if any, the minimum credit requirements.

(j) A statement regarding the school's professional staff including its policy regarding appointment, promotion, tenure, if applicable,

dismissal, the qualifications of professional staff, teaching and student loads, and the numbers of full-time and part-time and adjunct staff and their non-teaching responsibilities.

(k) A description of the student body including its size and level of education at admission, methods of recruitment and available financial aid resources.

(l) A copy of all catalogues or brochures publicly distributed by the school and a copy of advertisements sponsored by the school to recruit students or solicit funds.

(m) If the school is to offer credits or degree(s) by correspondence, proof of application for a correspondence license.

(n) After July 1, 1991, evidence that each applicant for enrollment is notified, in writing, on an application, enrollment or registration form to be signed by the applicant, that credits earned at the school are transferable only at the discretion of the receiving school.

(o) A statement of commitment to offer the full program for students to complete the program in a reasonable length of time.

(p) If the school is accredited, documentation of accreditation.

2243 Review Process-Schools Chartered In and Out of Vermont

2243.1 Review of Application for Certificate of Approval

Upon receipt of an application for certificate of approval, the Commissioner shall appoint a review team of no fewer than two individuals. The commissioner shall appoint persons to the review team who possess general knowledge of post-secondary school standards and, where applicable, persons with specialized knowledge in any particular programs offered by the school. At least one of the persons so appointed shall be from a Vermont post-secondary school or representative organization. The team shall review the application and shall verify its contents, if necessary, by visiting the school. The team shall present written recommendation regarding certification to the Commissioner within 90 days of the receipt of the completed application unless a longer period is required and explained in writing to the applicant. A copy of this recommendation shall be provided at the same time to the applicant. The applicant shall be given 30 days to respond, and if requested, shall be afforded a hearing before the Commissioner or his or her designee before a recommendation regarding certification is made by the Commissioner to the State Board.

2243.2 Application for Certificate of Degree Granting Authority

Upon receipt of an application for degree granting authority, which shall contain all the information required by an application for certification of approval and information documenting that the requirements of rule 2243.6.1 are met, the commissioner shall contact the Vermont Higher Education Council which shall review the application and determine the accuracy of its contents, if necessary, by visiting the school. The Commissioner may also appoint independent reviewers to accompany representatives of the Higher Education Council reviewing the school. The Higher Education Council shall present written recommendations regarding certification to the Commissioner within 90 days of the receipt of the completed application unless a longer period is required and explained in writing to the applicant. The independent reviewers, if appointed by the Commissioner, may either join in the recommendations of the Higher Education Council or present independent recommendations. A copy of all recommendations shall be provided to the applicant at the same time they are provided to the Commissioner. The applicant shall be given 30 days to respond to the recommendations and, if requested, shall be afforded a hearing before the Commissioner or his or her designee before a recommendation regarding certification is made by the Commissioner to the State Board. The State Board shall be provided with a copy of the recommendation of the Higher Education Council and, if applicable, a copy of the recommendations of the independent reviewers.

2243.3 Renewal of Certification

A school seeking renewal of certification shall apply in writing to the commissioner no later than six months prior to the end of any period of certification. Where appropriate, the school may incorporate by reference its prior application or any portion thereof. Certification of a school completing timely application shall extend until the State Board acts on further certification.

2243.4 Costs of Review

Post-secondary schools seeking a certificate of approval or renewal thereof shall be responsible for payment of up to $1000.00 to the Vermont Department of Education to cover the actual costs of services related to the certification and, in addition, for payment of travel, food and lodging expenses associated with evaluation costs. Schools seeking a certificate of degree-granting authority shall be responsible for payment of $1500.00 to the Department of Education for transfer to the Vermont Higher Education Council to cover the costs of certification and, in addition, for payment of

travel, food and lodging expenses associated with evaluation costs. Payment of the costs of services related to certification shall accompany the application and is non-refundable. An application shall not be deemed complete until the payment is made.

Transition provision. A post-secondary school which applied for a certificate of approval or degree-granting authority in Vermont after July 1, 1990 but before the effective date of these rules shall make payments as specified in the preceding paragraph except that such payments shall be made at any item prior to the determination by the State Board of Education on certification.

2243.5 Criteria for Issuance of a Certificate of Approval

To be issued a certificate of approval, an applicant shall demonstrate the following:

2243.5.1 Resources Required to Meet Stated Purposes

The school shall submit a clear and specific statement of purpose regarding the education which it intends to provide and shall demonstrate that it has the resources, including personnel, curriculum, finances, and facilities necessary to accomplish its stated purposes. All activities conducted by the school shall be consistent with its stated purpose.

2243.5.2 Stability

(a) Sources of Income. The school shall have a plan for financing each proposed degree level or program. The plan shall specify the dollar amounts and proportions of income by source, including but not limited to: (1) tuition and fees, (2) other school generated funds, (3) federal or state funds, and (4) private funds.

(b) Financial Capability. The school shall demonstrate in its financial plan that it will have sufficient funds to maintain operation and shall clearly document its ability to fulfill contractual obligations to students.

(c) Management. The school shall operate under a governing structure which clearly delineates responsibility for all legal aspects of operations. The school shall demonstrate sound business and financial management by showing evidence of an internal organization for the administration of its financial resources and a school budget planning process.

In addition, the school shall maintain adequate financial records audited annually by an independent certified public accountant.

2243.5.3 Disclosure

Information provided by the school to prospective students either directly or through advertisements shall not be false or misleading. The school shall be able to substantiate any claims regarding such matters as the likelihood of employment, graduate school admission or transfer of credit. The following information shall be disclosed in a general catalogue, bulletin or other public information document provided to prospective students prior to enrollment:

(a) Name and address of school.

(b) Date of publication of the document and the period of time to which it pertains.

(c) The school's calendar including beginning and ending dates of educational programs, holidays and other dates of importance.

(d) The purpose and philosophy of education of the school.

(e) A brief description of the school's physical facilities as related to the educational program.

(f) An accurate list of all educational activities.

(g) An indication of when specific required courses or other required learning experiences will normally be available.

(h) Educational content of each course, or of the program if separate courses do not exist.

(i) The length of time in hours, weeks or months normally required for completion of the educational program.

(j) An accurate listing of current educational providers.

(k) An indication of the distinction, if any, between adjunct or part-time educational providers and full-time educational providers.

(l) Policies and procedures regarding the extent to which educational experiences at other schools or other forms of learning will be counted toward meeting graduation requirements.

(m) Requirements for graduation.

(n) Statement of certificates or diplomas awarded upon graduation, if any.

(o) Statement of degrees awarded upon graduation, if any. If a degree is to be conferred by an out-of-state post-secondary school as a result of credits earned both at a school doing business in Vermont and elsewhere as a condition of the degree, how the credits earned in Vermont are integrated into the overall degree requirements.

(p) System of grading or evaluation.

(q) The school's policy establishing standards for determining adequate progress.

(r) Availability and extent of such student services as job placement service, counseling for academic and personal problems, food service facilities, and parking facilities.

(s) The availability of financial aid.

(t) An accurate representation of, and the distinction between, school accreditation, institutional memberships in professional organizations, specialized or professional program accreditation, state VA-approving agency course approval and state certification.

(u) The school's policy regarding refund of tuition and other fees collected in advance of enrollment or class attendance.

(v) The school's "closing" policy establishing procedures which will be followed in the event that a determination is made to cease operation.

(w) The school's student records policy with provisions regarding access, disclosure and the cost of copies.

(x) After July 1, 1991, a statement that credits earned at the school are transferable only at the discretion of the receiving school.

2243.5.4 Facilities

The school's facilities shall meet all applicable state, federal and local fire, safety, health and access standards.

2243.5.5 Student Records

The school shall have adequate procedures for the safe keeping of student records and for complying with the requirements of 16 VSA §175.

2243.5.6 Waiver of Requirements for Certification

A school which believes that one or more of the above requirements for certification should not be applied to it may request that such requirement be waived in its application for certification. The State Board may waive requirements and grant certification when it determines that the school is capable of providing its proposed program and that the students are adequately protected.

2243.6 Criteria for Issuance of a Certificate of Degree Granting Authority

To be issued a certificate of degree granting authority, a school shall show that it meets all of the criteria for issuance of a certificate of approval and in addition shall demonstrate the following:

2243.6.1 Degree Criteria

Schools desiring to offer post-secondary degrees including graduate degrees, shall clearly state their criteria for granting each degree and the procedure for determining that these criteria are met. Schools desiring to offer an associate degree shall provide and require completion of a minimum of 60 credit hours or equivalent learning experiences. Each educational program leading to a baccalaureate degree shall provide and require a minimum of 120 semester credit hours or equivalent learning experiences. Candidates for a degree shall be required to complete a coherent program of study.

2243.7 Certification Limitations

The State Board may grant a certificate of approval or degree granting authority, or renewal thereof, for a period of time the Board deems reasonable and appropriate not to exceed five years and upon such conditions, terms or limitations as the Board deems necessary. A school which has been granted a certificate shall notify the State Board prior to making substantive changes in or additions to the educational program described in its last application for certification. The State Board may require a school to re-apply for certification following program changes which are inconsistent with the purposes and educational philosophy stated by the school in its most recent application for certification or prior to offering a new level or degree.

2243.8 Denial, Approval with Stipulations, Revocation or Suspension of Certification

2243.8.1 Process

Prior to recommending denial, approval with stipulations, revocation or suspension of certification to the State Board, the Commissioner shall notify in writing the school of the reasons for the proposed action. The school shall be given 30 days to respond, and, if requested, shall be afforded a hearing before the Commissioner or his or her designee. The school shall also be afforded an opportunity to be heard by the Board before any action is taken.

2243.8.2 Criteria for Revocation or Suspension

The Board may suspend or revoke certification for good cause. Good cause shall include, but not be limited to:

(a) Failure of the school to continue to meet criteria for certification herein specified.

(b) Failure of the school to meet terms and conditions or limitations of certification established by the Board.

(c) Falsification of information provided to the Board.

(d) False or deceptive advertising.

(e) Judgment of bankruptcy in a liquidation proceeding.

(f) Ceasing of operation, or

(g) Refusal to permit team evaluation or other investigations provided for under these regulations.

2243.8.3 Investigations

The Commissioner may conduct any investigations of a school deemed necessary and appropriate in order to insure compliance with the terms of these regulations. A school shall permit any authorized representative of the Commissioner to visit its facilities and secure relevant information during the normal course of business. The school shall be notified prior to such a visit.

2250 Preservation of Post-Secondary Institutions' Student Records

2250.1 Statutory Authority: 16 VSA §175

Institutions of higher education are required to maintain their student academic records in a form prescribed by the State Board of Education. The State Department of Education, Division of Adult Education Services, is authorized to insure that the student academic records are in appropriate form. The institution of higher education is required to inform the State Board in the event it intends to close and to surrender its student academic records to a repository designated by the Board for storage. The repository is authorized to make verified copies available to students and former students.

2250.2 Maintenance of Academic Records

Each institution of higher education operating in this state shall maintain its permanent records in such a manner that they could be delivered to the State Board of Education in a satisfactory form should the institution discontinue operation. At a minimum, the records shall be kept current and preserved against damage or loss.

Monitoring

Upon reasonable notice, every institution shall make available to a representative of the State Board of Education its student records for the purpose of ensuring compliance with this regulation. Examination of the records under this section shall take place in a manner that will not permit identification of individual students.

Return of Records

A repository may duplicate the records of an institution and then return the original records to the institution.

Institutions Discontinued Prior to April 25, 1979

The custodian of records of institutions discontinued prior to April 25, 1979, shall be subject to the requirements of 16 VSA §175 and these regulations.

2250.3 Form and Contents of Academic Records

The permanent academic record of each student registered for credit at an institution of higher education which operates in this state, whether or not such institution is chartered in this state, shall contain at a minimum:

the identification of the institution;

the identification of the student;

the record of courses satisfactorily completed and evaluation of the student's work therein, or, if records are not kept in this form, other records of the student's studies and academic progress;

periods of enrollment covered by the third item above;

the student's status at the close of the last period of enrollment;

degree and/or certificates awarded.

A key to, or explanation of, the student's permanent academic record shall be available to accompany this record.

2260-2265.3 were repealed as of 4/24/96

2266 Post-Secondary Correspondence Schools

A correspondence school which offers post-secondary credits or degree(s) shall also meet the applicable requirements of §§176 and 176a of Title 16.

2270 Private Kindergarten Approval 2/1985

Statutory Authority 16 VSA §166(b)

2271 Procedure for Approval

2271.1 Application

Every person or entity seeking to operate as an approved kindergarten shall apply in writing to the Commissioner of Education.

An application for approval shall contain the following:

Name and address of the school;

A description of the school's curriculum and methods of instruction;

A description of the school's physical facilities;

A list of the school's staff and their qualifications;

The operating schedule of the school; and

A statement certifying that the school is in compliance with the Kindergarten-Nursery School provisions in the Regulations for Day Care of the Social and Rehabilitation services Department (hereinafter "S.R.S. Kindergarten Regulations").

2271.2 Appointment of Reviewer

Upon receipt of an application for approval, the Commissioner shall appoint an educator to review the application and visit the school. In addition, the Commissioner shall contact S.R.S. to determine on his or her behalf whether the school meets the "S.R.S. Kindergarten Regulations". First priority for review shall be given to private kindergartens that are located in the vicinity of towns where the local school board or town has taken a formal vote to provide public supported kindergarten.

2271.3 Review

The appointed educator shall review the application and visit the school.

2271.4 Report to Commissioner

The appointed educator shall present a written recommendation regarding approval to the Commissioner. The report of the appointed educator shall incorporate the determination of S.R.S. concerning compliance with the "S.R.S. Kindergarten Regulations". A copy of the recommendation shall be provided at the same time to the applicant.

2271.5 Board Recommendation

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

2272 Criteria for Approval

The State Board shall approve a private kindergarten if it finds that:

2272.1 The curriculum embodies a minimum course of study, as defined in 16 VSA §906, Courses of Study, with learning experiences adapted to a pupil's age and ability.

2272.2 The school is in compliance with state requirements pertaining to the health and safety of pupils adopted by the Department of Labor and Industry and the Department of Health. In regards to health requirements, private kindergartens located in elementary or secondary school buildings shall comply with the Environmental Health Regulations for School Houses (Chapter 5, Subchapter 3, Vermont Health Regulations). All other private kindergartens shall comply with the Environmental Health Regulations for Day Care Facilities (Chapter 5, Subchapter 14, Vermont Health Regulations).

2272.3 The director and teachers in the kindergarten are qualified through training or experience in:

structuring kindergarten learning environments which enhance cognitive and social development;

teaching skills and concepts in mathematics, language arts, science, the arts, and health which are consistent with principles of child development.

planning and leading activities that foster social and emotional growth in young children;

dealing with parents and family of children to ensure home support and to promote learning outside of the school or center, and

identifying developmental delays in young children.

2272.4 The kindergarten maintains an operating schedule that, exclusive of time allowed for meals and recess periods, includes a total number of instructional hours which is not less than that required of a public school kindergarten. (State Board of Education Policy Manual, 1981, Section 2311.4).

2272.5 The facility and program meet the "S.R.S. Kindergarten Regulations".

2273 Additional Requirements

2273.1 Approved private kindergartens shall maintain records of attendance, health, and progress for public tuition students, in a form required by the school district and in accordance with state and federal law. These records shall be transferred to the public schools no later than July 15 after the end of the school year.

2273.2 The director and teachers in an approved private kindergarten shall participate in professional development activities provided by the public school district.

2274 Term of Approval

The State Board may grant approval for a term of not more than two years. A private kindergarten must be approved prior to receiving tuition payments from a public school district.

2275 Denial, Revocation or Suspension of Approval

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

2300 LENGTH OF SCHOOL DAY AND YEAR 2/9/06

Specific Program Requirements for Public Schools

2310 Length of School Day and Year

2311 School Year. Each public school shall be maintained and operated for 175 student days unless waivers are granted by the Board as provided by 16 VSA §1071.

2311.1 Days lost because schools are closed for emergency reasons prior to February 1 of any year shall be rescheduled and made up during that school year when such closing will result in a schedule of less than 175 pupil attendance days for the year.

2311.2 Petitions for waivers of the 175 student attendance days shall be submitted to the Commissioner's office within 10 days as stipulated by law.

2311.3 Petitions received between February 1 and June 15 will be considered on a case-by-case basis. When a petition is sought for emergency reasons, the State Board will consider the school district's calendar to determine if a substantial number of contingency days were included, particularly if the cause is inclement weather conditions.

2311.4 School districts shall include no fewer than five contingency days as annual school calendars are developed and adopted.

2311.5 Day of Mourning. Whenever a National Day of Mourning falls on a regularly scheduled school day, the day shall be counted as a full day of school.

2312 Length of School Day

2312.1 Except as provided in Rule 2311.5, the school day shall be:
(a) for kindergarten, a minimum of two instructional hours. However, in any calendar week, five school days may be counted if the total number of hours of instructional time is equal to or exceeds 10 hours per week.
(b) for grades 1-2, a minimum of four instructional hours including recess, excluding lunch. However, in any calendar week, five school days may be counted if the total number of hours of instructional time is equal to or exceeds 20 hours, including recess, excluding lunch.
(c) for grades 3-8, a minimum of 5 ½ instructional hours, including recess, excluding lunch. However, in any calendar week, five school days may be counted if the total number of hours of instructional time is equal to or exceeds 27 ½ hours, exclusive of the time allowed for recess and lunch.

(d) for grades 9-12, a minimum of 5 ½ instructional hours, exclusive of the time allowed for recess and lunch. However, in any calendar week, five school days may be counted if the total number of hours of instructional time is equal to or exceeds 27 ½ hours, exclusive of the time allowed for recess and lunch.

2312.2 Exceptions to Length of School Day

(a) Where the board of school directors has found it necessary to delay the opening of the school day by up to two hours or to send the pupils home after school has begun due to emergencies such as the outbreak of a contagious disease, unsafe building conditions, hazardous weather, high water, unsafe highways, or a fire, the day may be counted as a full day of school.

(b) Upon request of the board of school directors, the Commissioner may permit alternate methods of counting the cumulative instructional hours set forth in subsection 2311.4 of this section where:

(1) overall, students do not lose instructional time;

(2) students do not lose transportation to and from school or to other educational programs during the school day;

(3) students do not lose access to related education programs such as technical or special education; and

(4) it is otherwise in the interests of the students and the district.

2343 Vermont Secondary Equivalency Program 7/1985

Students who receive a standard score of 35 or above on each of the five tests of the General Education Development Test and an average standard score of 45 on all five tests will be entitled to a Vermont secondary school equivalence certificate providing age and residence requirements are met.

Vermont regulations require that an applicant for this certificate offer satisfactory evidence of residence in this state and attain 18 years of age, or 16 years of age if the parent or guardian has given written consent, unless there are extenuating circumstances. Applications should be made on a special form, available on request, to the State Department of Education.

2344-2349 (Vacant)

2350 Driver and Traffic Safety Education Programs

2350 A driver education program shall include an approved driver education course during regular school hours as a part of the offerings of the regular school-day program.

2351 To be approved by the Department of Education, a driver education course must consist of at least 30 clock hours of class instruction and at least 6 hours of behind-the-wheel instruction by a certified driver education instructor. No more than 2 hours of classroom instruction, and 1 hour of behind-the-wheel instruction shall be provided to a student in one day.

Courses provided by secondary schools for persons above high school age, who are unlicensed beginners, shall consist of at least 20 clock hours of classroom instruction plus 6 or more clock hours per student of behind-the-wheel instruction or its equivalent.

2352 Unless the driver education course offered to persons not regularly enrolled in high school is the course approved by the Department of Education and the Department of Motor Vehicles in accordance with the state law, the instruction becomes a “driver training school” as defined in 23 VSA, Section 701, and the persons offering the course must be specially licensed pursuant to 23 VSA, Section 702. In either case, the instructor must have a valid instructor’s license. None of the expenses for this adult program shall be included in the claims for reimbursement under the State High School Driver Education Program.

2353 Behind-the-wheel instruction of pupils on the Interstate Highway System in Vermont shall be conducted only near the end of the required six clock hours of in-car practice driving for each student.

2354 Safety, insurance and other legal requirements shall be met according to 23 VSA, Section 921.

2360 Special Education Effective: 6/10/10

2360.1 Statement of Purpose

These rules are designed to ensure that:

(a) Eligible Vermont children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; in accordance with state and federal laws and regulations and in a cost-effective manner; and

(b) The rights of children with disabilities and their parents are protected.

2360.2 Free Appropriate Public Education (FAPE) (34 CFR §300.101)

These rules implement the Individuals with Disabilities Education Improvement Act (IDEA), as amended. These rules provide for the education of children, youth and young adults between the ages of 3 through 21, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in Rule 4313. The Department may use whatever State, local, Federal, and private sources of support are available in the State to meet the requirements of this part. For example, if it is necessary to place a child with a disability in a residential facility, the State could use joint agreements between the agencies involved for sharing the cost of that placement. Nothing in this part relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a child with a disability. Consistent with Rule 2363.2(a) and (d), the Department shall ensure that there is no delay in implementing a child's IEP, including any case in which the payment source for providing or paying for special education and related services to the child is being determined.

(a) FAPE for children beginning at age 3:

An eligible child shall be entitled to a free appropriate public education beginning no later than the child's third birthday and continuing, unless otherwise provided herein, through 21 years of age. An individualized education program (IEP), rather than an individualized family service plan (IFSP), shall be in effect for an eligible child by his or her third birthday. If a child's third birthday occurs during the summer, the child's IEP team shall determine the date when services under the IEP will begin.

(b) FAPE for children who have graduated:

A child who has graduated from high school with a regular high school diploma shall not be entitled to a FAPE. A child who has not yet graduated and whose entitlement to a FAPE ends because the upper age limit of eligibility is reached as described in Rule 2360.2(a), may be allowed to complete the remaining academic year with IEP team approval and approval from the Department of Education.

(c) FAPE for youth who have dropped out of school:

If a youth drops out of school, that youth may return at any time and request to be provided with a FAPE until the youth graduates with a high school diploma or the youth's entitlement to a FAPE ends because the upper age limit of eligibility is reached as described in Rule 2360.2(a).

(d) FAPE for children advancing from grade to grade:

Each LEA shall provide a FAPE to any individual child with a disability, who is eligible for special education, even though the child has not failed or been retained in a course or grade and is advancing from grade to grade. The determination that a child advancing from grade to grade may be eligible for special education shall be made on an individual basis by the child's EPT or IEP team.

(e) FAPE for youth who are incarcerated in adult correctional facilities:

(1) For a person between the ages of 18 through age 21:

(i) If a person in his or her last educational placement before incarceration had not been identified as a youth with a disability who was eligible for special education and did not have an IEP in place, the Department of Corrections will not be mandated to provide a FAPE.

(A) The Department of Corrections shall make reasonable efforts to obtain and review whatever information is needed to determine that the incarcerated individual has not been identified as a youth eligible for special education and did not have an IEP in his or her last educational placement prior to incarceration in an adult correctional facility.

(ii) A person who is incarcerated shall be entitled to a FAPE if:

(A) The person was provided services through an IEP before incarceration;

(B) The person had been provided services through an IEP, had left school, then was incarcerated; or

(C) The person had not been provided services through an IEP, but had been identified as a youth with a disability who was eligible for special education.

(iii) The following requirements do not apply to incarcerated youth aged 18 through 21 (34 CFR §300.324):

(A) The requirement to participate in district-wide assessment programs and

(B) The IEP requirements for transition planning and transition services, if the inmate will reach the upper age limit for a FAPE before release from prison based on consideration of sentence and eligibility for early release.

(iv) Modifications of IEP or placement.

(A) The IEP team may modify the youth's IEP or placement, if the Department of Corrections has demonstrated a bona fide security or other compelling interest that cannot otherwise be accommodated.

(B) The LRE requirements of §2364 do not apply to incarcerated youth on IEPs.

(2) For incarcerated persons under the age of 18, the Department of Corrections shall ensure that at intake a screening occurs to identify those who have a disability or who are suspected of having a disability and who are in need of special education. Those who are in need of special education shall be provided with an individualized educational program (IEP) and re-evaluations as prescribed under Rule 2362.

(f) Residential Placement (34 CFR §300.104)

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.

(g)Assistive technology (34 CFR §300.105)

(1) Each LEA shall ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in Rule 2360.3, are made available to a child with a disability if required as a part of the child's—

(i) Special education services under Rule 2360.3.1;

(ii) Related services under Rule 2360.3.2; or

(iii) Supplementary aids and services under Rules 2362 (3) 2362.2.4 (d)(13) and 2362.2.5 (a)(1)(iii).

(2) On a case-by-case basis, the use of school purchased assistive technology devices in a child's home or in other settings is required if the child's IEP Team determines that the child needs access to those devices in order to receive FAPE (34 CFR §300.105(b)).

(h)Extended School Year Services (34 CFR §300.106)

Each LEA shall ensure that Extended School Year Services (ESY) are available as necessary to provide FAPE consistent with Rule 2363.8(h) and at no cost to the parents of the child.

(i) Non-academic services (34 CFR §300.107)

(1) Each LEA shall take steps including the provision of supplementary aids and services determined appropriate and necessary by the child’s IEP team to provide non-academic and extra-curricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.

(2) Non-academic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational

activities, special interest groups or clubs sponsored by the LEA, referrals to agencies that provide assistance to individuals with disabilities, and employment of children, including both employment by the LEA and assistance in making outside employment available.

(j) Physical education (34 CFR §300.108)

Each LEA shall:

(1) Provide physical education services, specially designed if necessary, that shall be made available to every child with a disability receiving FAPE unless the LEA enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades.

(2) Afford the opportunity to each eligible child to participate in the regular physical education program available to nondisabled children unless--

(i) The child is enrolled full time in a separate facility; or

(ii) The child needs specially designed physical education as prescribed in the child's IEP.

(3) Special physical education. If specially designed physical education is prescribed in a child's IEP, the LEA responsible for the education of that child shall provide the services directly or make arrangements for those services to be provided through other public or private programs.

(4) Education in separate facilities. The LEA responsible for the education of an eligible child who is enrolled in a separate facility shall ensure that the child receives appropriate physical education services in compliance with this section.

(k)Program options (34 CFR §300.110)

Each LEA shall ensure that children receiving special education have available to them the variety of educational programs and services available to nondisabled children in the LEA, including art, music, industrial arts, consumer and homemaking education, and vocational education.

(l) Child find (34 CFR §300.111)

(1) All children with disabilities residing within the State, including children with disabilities who are homeless children or are children in State custody or are vulnerable adults, and children attending independent schools, regardless of the severity of their disability, and who are in need of special education and related services shall be identified, located and evaluated.

(2) Child-find procedures and activities shall be as follows:

(i) LEAs are responsible for establishing and implementing a comprehensive child-find system for children from birth through twenty-one years of age.

(A) Except for children who are parentally placed in independent elementary and secondary schools outside of the LEA of residence, the

LEAs are responsible for assuring child-find for all children who reside within the LEA.

(B) For children kindergarten through age 21 who are parentally placed in independent elementary and secondary schools, the LEA shall have child-find responsibility for the children in any independent school located within the boundaries of the LEA.

(C) For children birth through three, a LEA may fulfill its child-find responsibility by contracting with a regional Children's Integrated Services/Early Intervention (CIS/EI) program or other entities.

(3) Each LEA shall ensure that public notification is given before conducting any significant activity that is designed to identify, locate and evaluate children birth through 21.

(i) All notices shall be available in the native languages of the various major population groups.

(ii) The notices shall indicate that information obtained during "child-find" shall remain confidential as required in sections 2365.2 – 2365.12 "Confidentiality of Information and Child Records", of these rules.

(iii) The notices shall contain a description of the children about 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;

(iv) A summary of the policies and procedures that participating agencies shall follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and

(v) A description of the Family Educational Rights and Privacy Act of 1974 and implementing regulations in 34 CFR, Part 99 shall be included in the notice.

(4) Each LEA shall annually inform the public regarding the availability of early intervention for children from birth to age three and special education services for children who are three through twenty-one years of age, including:

(i) Children who are not enrolled in school;

(ii) Children attending independent schools or who are enrolled in home study programs;

(iii) Children who are suspected of having a disability even though they are advancing from grade to grade; and

(iv) Children who are highly mobile such as migrant children; and

(v) Children who are homeless or a child in state custody or a vulnerable adult.

(5) In addition to posting notices in major newspapers, notification activities may also include the posting of notices on websites, fliers in various locations such as physicians' offices and health centers, radio or television announcements, and community outreach.

(6) Each LEA shall identify, locate and evaluate all infants, toddlers, children, and young adults, who may be eligible for special education and related services, birth through twenty-one residing within the jurisdiction of the responsible agency, who are in need of early intervention or special education services.

(i) For children birth up to age three, the child-find system shall employ specific elements of evaluation and assessment, including a comprehensive, multidisciplinary initial evaluation and assessment in all developmental areas.

(ii) For children birth up to three years of age, the LEA shall notify the regional Children's Integrated Services/Early Intervention (CIS/EI) host agency of all children found eligible for Part C services.

(7) Each LEA shall annually submit to the Department of Education in an electronic format specified by the Department, data requested by the Department on children ages three through twenty-one who have been found eligible for special education under the IDEA.

(i) For children birth to age three, the Coordinator of CIS/EI shall forward the child-count of children being served to the Department of Education.

(m) Individual Education Programs (IEP) (34 CFR §300.112)

An IEP shall be developed, reviewed and revised for each child with a disability consistent with Rule 2363.

(n) Routine checking of hearing aids and external components of surgically implanted medical devices (34 CFR §300.113)

(1) Hearing Aids

(i) Each LEA shall ensure that hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly.

(2) Surgically implanted devices

(i) Each LEA shall ensure that the external components of surgically implanted medical devices are functioning properly.

(ii) LEAs are not responsible for the post-surgical maintenance, programming, or replacement of the medical device that has been surgically implanted or of an external component of the surgically implanted medical device.

2360.3 Definitions

(a) The following definitions shall apply to terminology used throughout the special education rules:

(1) ***Accommodations.*** Accommodations means those evaluation procedures, curricula, materials or programmatic adaptations, behavior management interventions, and supplemental aids and services that are necessary for an eligible child to benefit from his or her general education or to participate in non-academic or extra-curricular activities.

(2) ***Adaptive behavior skills***. Adaptive behavior skills are the skills essential to independent functioning, personal responsibility, and social responsibility.

(3) ***Assistive technology device***. Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device.

(4) ***Assistive technology service***. Assistive technology service means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:

(i) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;

(ii) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;

(iii) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(iv) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(v) Training or technical assistance for a child with a disability and/or, if appropriate, that child's family; and

(vi) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, and/or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child.

(5) ***Basic skills***. Basic skills are those skills enumerated in Rule 2362(f).

(6) ***Child in state custody***. A "child in state custody" means a child placed in custody pursuant to Chapters 49 and 55 of Title 33. A "child in state custody" shall be afforded all rights and protections as a "ward of the State" as provided in 20 U.S.C. § 140 1(36).

(7) ***Child with a disability***. In this document, "child with a disability" is a child who has been found eligible for special education and related services consistent with the process found in Rules 2361 and 2362.

(8) ***Consent***. Consent means that—

(i) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

(ii) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

(iii) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime.

(iv) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

(9) ***Core curriculum***. Core curriculum means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography which have instructional approaches that are based on scientifically validated research supporting the curriculum's effectiveness and demonstrate a high probability of success for a majority of children.

(10) ***Day***. Whenever a limit of "days" appears within these regulations, the following definitions shall apply:

(i) "Day" is defined as a calendar day, unless stated to be "business day" or "school day".

(ii) "Business day" means weekdays, excluding Federal and State holidays, unless the latter are specifically included.

(iii) "School day" means any day, including partial days, when children attend school for instructional purposes. The term school day has the same meaning for all children in school, including children with and without disabilities.

(11) ***Eligibility***. See Rule 2360.5.3 for children from birth through 2 years 11 months of age. See Rule 2361 for children ages 3 up to the sixth birthday. See Rule 2362 for children and children ages 6 through 21.

(12) ***Evaluation***. Evaluation means procedures used in accordance with Rule 2362 with the following exception: The screening of a child by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

(13) ***Evaluation Planning Team (EPT)***. Evaluation Planning Team means a group of individuals including the parent that is responsible for developing an evaluation plan and reviewing the results to determine if a child is or continues to be eligible for special education and related services. The membership requirements are the same as those outlined for the IEP Team in Rule 2363.

(14) ***Extended School Year Services***. The term extended school year services means special education and related services that are provided to a child with a disability beyond the normal school year of the LEA in accordance with the child's IEP and state standards and at no cost to the parents of the child.

(15) ***Functional Performance***. Functional performance is the acquisition of essential and critical skills needed for children with disabilities to learn specific daily living, personal, social, and employment skills, or the skills needed to increase performance and independence at work, in school, in the home, in the community, for leisure time, and for postsecondary and other lifelong learning opportunities.

(16) ***Free Appropriate Public Education (FAPE)***. A FAPE means special education and related services that—

(i) Are provided at public expense, under public supervision and direction, and without charge to the parent or child;

(ii) Meet the standards of the State, including the requirements of Part B of the IDEA; include preschool, elementary school, or secondary school education; and

(iii) Are provided in conformity with an individualized education program (IEP) that meets the requirements of Rules 2363 – 2363.8.

(17) ***Highly Qualified Special Education Teachers***. Highly Qualified Special Education Teachers shall meet one of the following:

(i) Requirements for special education teachers teaching core academic subjects. For any public elementary or secondary school special education teacher teaching core academic subjects, the term highly qualified means that the special education teacher shall carry an endorsement appropriate to the assignment AND shall meet the content knowledge requirements for the highest grade level of the children who receive primary instruction from the teacher.

(ii) Requirements for special education teachers in general.

(A) When used with respect to any public elementary school or secondary school special education teacher, highly qualified requires that—

1) The teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), and holds a license to teach in the State as a special education teacher;

2) The teacher does not have provisional special education certification or licensure; and

3) The teacher holds at least a bachelor's degree.

(B) A teacher will be considered to meet the standard in paragraph (ii)(A) of this section if that teacher is participating in an alternative

route to special education certification program under which the teacher—

1) Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching;

2) Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;

3) Assumes functions as a teacher only for a specified period of time not to exceed three years; and

4) Demonstrates satisfactory progress toward full certification as prescribed by the State of Vermont.

(18) ***Homeless children***. "Homeless children" means individuals who lack a fixed, regular, and adequate nighttime residence; and includes:

(i) Children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;

(ii) Children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;

(iii) Children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

(iv) Migratory children who qualify as homeless because the children are living in circumstances described in sections (i) through (iii).

(19) ***Individualized education program (IEP)***. Individualized education program means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with Rule 2363.

(20) ***Individualized education program team***. Individualized education program team or IEP team means a group of individuals described in Rule 2363 that is responsible for developing, reviewing, or revising an IEP for a child with a disability.

(21) ***Limited English proficient***. Limited English proficient means an individual, aged 3 through 21, who is enrolled or preparing to enroll in an elementary school or secondary school; and who meets one of the following criteria:

(i) Who was not born in the United States or whose native language is a language other than English; or

(ii) Who is a Native American or Alaska Native, or a native resident of the outlying areas; and

(A) Who comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or

(B) Who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and

(C) Whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual:

1) The ability to meet the proficient level of achievement on State assessments;

2) The ability to successfully achieve in classrooms where the language of instruction is English; or

3) The opportunity to participate fully in society.

(22) ***Local Education Agency (LEA)***. Local Education Agency means the supervisory union unless there is a unanimous vote at a supervisory union meeting that the supervisory union will only coordinate special education services on behalf of member districts in which case the LEA is the local school district (16 V.S.A . 261a(6)).

(23) ***Meeting***. A meeting is a session held for the development or review of a child's evaluation plan, eligibility determination or an IEP. A meeting does not include informal or unscheduled conversations involving school personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities in which school personnel might engage to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

(24) ***Native language***. Native language, when used with respect to an individual who is limited English proficient, means the following:

(i) The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided in paragraph (iii) of this section.

(ii) In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment.

(iii) For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication).

(25) ***Parent***. Whenever the words "parent" or "parents" appear in these rules, the words shall mean:

(i) A biological or adoptive parent of the child

(A) Except as provided in (vi) below, the biological or adoptive parent, when attempting to act as the parent under these rules and when more than one party is qualified under (i) through (v) of this section to act as a parent, shall be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

(ii) A legal guardian, but not the state if the child is in the custody of the Commissioner of the Vermont Department for Children and Families or the Commissioner of the Vermont Department of Disabilities, Aging and Independent Living. This provision does not diminish or otherwise alter any authority or responsibility of a state agency regarding general education decisions for a child in state custody pursuant to Chapter 49 and 55 of Title 33 or vulnerable adult in state custody pursuant to Chapter 215 of Title 18.

(iii) A person who is acting in the place of a biological parent or adoptive parent, including a grandparent, stepparent or other relative with whom the child lives, or a person who is legally responsible for the child's welfare;

(iv) A foster parent or developmental home provider who has been appointed the educational surrogate parent by the Vermont Educational Surrogate Parent Program; or

(v) An educational surrogate parent;

(vi) If a judicial decree or order identifies a specific person or persons to act as the "parent" of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the "parent" for purposes of this section, except that a LEA that provides education or care for the child may not act as the parent.

(26) ***Personally identifiable***. Personally identifiable means information that contains:

(i) The name of the child, the child's parent, or other family member;

(ii) The address of the child;

(iii) A personal identifier, such as the child's social security number or student identification number; or

(iv) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

(27) ***Scientifically based research***. Scientifically based research means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs; and includes research that:

(i) Employs systematic, empirical methods that draw on observation or experiment;

(ii) Involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;

(iii) Relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;

(iv) Is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;

(v) Ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and

(vi) Has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

(28) ***Services plan***. Services plan means a written statement that describes the special education and related services the LEA will provide to a parentally-placed child with a disability enrolled in an independent school or in a registered home study program, who has been designated to receive services, including the location of the services and any transportation necessary, and is developed and implemented in accordance with Rule 2368.

(29) ***Supplementary aids and services***. Supplementary aids and services means aids, services, and other supports that are provided in general education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in the least restrictive environment.

(31***) Universal Design***. The term "universal design", as provided in the Assistive Technology Act of 2004, means a concept or philosophy for designing and delivering products and services that are usable by people with the widest possible range of functional capabilities, which include products and services that are directly accessible (without requiring assistive technologies) and products and services that are interoperable with assistive technologies.

(32) ***Vulnerable adult in state custody***. For purposes of these rules, "vulnerable adult in state custody" is a youth that is 18 through 21 years of age and for whom guardianship authority to make educational decisions on behalf of the youth has been granted by a court to the Commissioner of the Department of Disabilities, Aging and Independent Living pursuant to Chapter 215 of Title 18. A vulnerable adult in state custody meets the definition of, and shall be afforded, all rights and protections as a "ward of the state" pursuant to 20 U.S.C. § 140 1(36).

(33) ***Ward of the state***. All rights and protections as a "ward of the state" pursuant to 20 U.S.C. § 1401(36) shall be afforded to a "child in state custody" or a "vulnerable adult in state custody" as those terms are defined in this section.

2360.3.1 Special Education Services

The term "special education" means specially designed instruction that cannot be provided within the school's standard instructional conditions or provided through the school's educational support system, at no cost to the parent, to meet the unique needs of an eligible child with a disability. Specially designed instruction means adapting, as appropriate, to the needs of an eligible child, the content, methodology, or delivery of instruction:

(a) To address the unique needs of the child that result from the child's disability; and

(b) To ensure access of the child to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the LEA that apply to all children.

(1) Special education services include, as appropriate:

(i) Classroom instruction, home instruction, instruction in hospitals and institutions and instruction in other settings;

(A) Co-teaching services is the delivery of special education services in the general education setting provided jointly by the general education teacher and a special education teacher.

1) By selecting the co-teaching services model, the IEP team has determined that there is no compelling reason why the child's instruction cannot be provided jointly in the general education setting.

2) The general education teacher shall be an active participant in IEP meetings.

3) The general education and special education teachers will review and document each child's progress towards course objectives and IEP goals. Should a progress review at any grading period indicate that a child is in danger of failing a course or is not making satisfactory progress towards IEP goals, the IEP team shall meet immediately to:

a) Determine continued co-teaching services or change of placement, and

b) Revise the IEP as appropriate.

4) In order to offer co-teaching services, the LEA must complete a plan for implementation which includes continuous professional development and submit the plan to the Vermont Department of Education for approval.

(2) Instruction in physical education which is the development of physical and motor fitness; fundamental motor skills and patterns; and skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports); and includes special physical education, adapted physical education, movement education, and motor development;

(3) Speech–language pathology services for the prevention and/or habilitation of speech-language impairments may be special education, if provided as specially designed instruction; or related services, if required to assist a child with a disability to benefit from special education.

(4) Travel training which is the provision of instruction, as appropriate, to children with significant cognitive disabilities and any other children with disabilities who require this instruction, to enable them to:

(i) Develop an awareness of the environment in which they live; and

(ii) Learn the skills necessary to move effectively and safely from place to place within that environment such as school, home, work, and in the community.

(5) Technical education which means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

(c) To ensure successful post-secondary transition, transition services may be special education, if provided as specially designed instruction, or related services, if required to assist a child to benefit from special education.

(1) "Transition services" means a coordinated set of activities that:

(i) Are designed within a results-oriented process that is focused on improving the academic and functional achievement of the youth who is eligible to facilitate the youth's movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(ii) Are based on the individual youth's needs, taking into account the youth's preferences and interests; and includes:

(A) Instruction;

(B) Related services;

(C) Community experiences;

(D) The development of employment and other adult living objectives; and

(E) If appropriate, acquisition of daily living skills and functional vocational evaluation.

2360.3.2 Related Services

(a) The term "related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a child who requires special education services to benefit from his or her special education.

(b) Exception. Related services do not include a medical device that is surgically implanted, the optimization of device functioning, maintenance of the device, or the replacement of that device.

(c) A child will not be designated as a child who is eligible for special education, if the child needs only a related service, but not special education services.

(d) Related services shall include, but are not limited to:

(1) Audiology that includes:

(i) Identification of children with hearing loss;

(ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

(iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;

(iv) Creation and administration of programs for prevention of hearing loss;

(v) Counseling and guidance of children, parents, and teachers regarding hearing loss; and

(vi) Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(2) Counseling services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

(3) Early identification and assessment of disabilities in children.

(4) Interpreting services, as used with respect to children who are deaf or hard of hearing, includes oral transliteration services, cued language transliteration services, sign language interpreting services and special interpreting services for children who are deaf-blind.

(5) Medical services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.

(6) Occupational therapy services shall be provided by a qualified occupational therapist and includes:

(i) Improving, developing or restoring functions impaired or lost through illness, injury, or deprivation;

(ii) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and

(iii) Preventing, through early intervention, initial or further impairment or loss of function.

(7) Orientation and mobility services are:

(i) Services provided to blind or visually impaired children by qualified personnel to enable those children to attain systematic orientation to and safe movement within their environments in school, home, and community; and

(ii) Travel training instruction, and teaching children the following, as appropriate:

(A) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);

(B) The use of the long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for children with no available travel vision;

(C) To understand and use remaining vision and distance low vision aids; and

(D) Other concepts, techniques, and tools.

(8) Parent counseling and training as follows:

(i) Assisting parents in understanding the special needs of their child;

(ii) Providing parents with information about child development; and

(iii) Helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.

(9) Physical therapy services provided by a qualified physical therapist.

(10) Psychological services as in:

(i) Administering psychological and educational tests, and other assessment procedures;

(ii) Interpreting assessment results;

(iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;

(iv) Consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;

(v) Planning and managing a program of psychological services, including psychological counseling for children and parents; and

(vi) Assisting in developing positive behavioral intervention strategies

(11) Recreation includes:

(i) Assessment of leisure function;

(ii) Therapeutic recreation services;

(iii) Recreation programs in schools and community agencies; and

(iv) Leisure education.

(12) Rehabilitation counseling services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a youth with a disability. The term also includes vocational rehabilitation services provided to a youth with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 et seq.

(13) School nurse services provided by a qualified school nurse, designed to enable a child with a disability to receive FAPE as described in the child's IEP.

(14) Social work services in schools include:

(i) Preparing a social or developmental history on a child with a disability;

(ii) Group and individual counseling with the child and family;

(iii) Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;

(iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and

(v) Assisting in developing positive behavioral intervention strategies.

(15) Transportation includes:

(i) Travel to and from school and between schools;

(ii) Travel in and around school buildings; and

(iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

(16) Speech-language pathology services include:

(i) Provision of speech and language services for the habilitation or prevention of communicative impairments; and

(ii) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

(17) Transition services may be related services, if required to assist a child to benefit from special education.

2360.3.3 Personnel Qualifications

(a) The Vermont Department of Education has established and maintains qualifications to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.

(b) Related services personnel and paraprofessionals- The qualifications under subparagraph (a) include qualifications for related services personnel and paraprofessionals that--

(1) Are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services;

(2) Ensure that related services personnel who deliver services in their discipline or profession meet the requirements of section (b)(1) and have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(3) Allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services to children with disabilities.

(c) Policy: In implementing this section, the Vermont Department of Education has a policy that includes a requirement that responsible LEAs in the State take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services under this part to children with disabilities.

2360.3.4 Required Forms

The Commissioner shall develop, make available, and publish a list of required and suggested special education forms for use by LEAs in implementing special education and related services. Responsible agencies shall use the special education forms, which the Commissioner designates for required use. The forms provided by the Commissioner shall not require more paperwork than is required by federal law and regulation.

2360.3.5 Use of Insurance

(a) Nothing in these regulations or the regulations implementing the Individuals with Disabilities Education Improvement Act is intended to relieve an insurer, Medicaid or other third party from an otherwise valid obligation to provide or pay for services to a child who is eligible for special education. A LEA shall use funds from the State Medicaid reimbursement administrative special fund in accordance with 16 V.S.A. §2959a (e).

(1) Children with disabilities who are covered by public insurance.

(i) A LEA may use the Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services required under IDEA Part B, as permitted under the public benefits or insurance program, except as provided in paragraph (1)(ii) of this section.

(ii) With regard to services required to provide FAPE to an eligible child under IDEA Part B, the LEA:

(A) May not require parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive FAPE under these rules;

(B) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to IDEA Part B, but pursuant to paragraph (4)(ii) of this section, may pay the cost that the parent otherwise would be required to pay;

(C) May not use a child's benefits under a public benefits or insurance program if that use would--

1) Decrease available lifetime coverage or any other insured benefit;

2) Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school;

3) Increase premiums or lead to the discontinuation of benefits or insurance; or

4) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures; and

(D) Shall obtain informed written parental consent, consistent with Rule 2365.1.3(b) with notification to parents that the parents' refusal to allow access to their public benefits or insurance does not relieve the LEA of its responsibility to ensure that all required services are provided at no cost to the parents.

(2) Children with disabilities who are covered by private insurance.

(i) With regard to services required to provide FAPE to an eligible child under IDEA Part B, a LEA may access a parent's private insurance proceeds only if the parent provides informed written consent consistent with Rule 2365.1.3(b).

(ii) Each time the LEA proposes to access the parent's private insurance proceeds, the agency shall--

(A) Obtain informed written parental consent consistent with (2)(i); and

(B) Inform the parents that their refusal to permit the LEA to access their private insurance does not relieve the LEA of its responsibility to ensure that all required services are provided at no cost to the parents.

(3) Use of Part B funds.

(i) If a LEA is unable to obtain parental consent to use the parent's private insurance, or public insurance when the parent would incur a cost for a specified service required under this part, to ensure FAPE the LEA may use its Part B funds to pay for the service.

(ii) To avoid financial cost to parents who otherwise would consent to use private insurance, or public insurance if the parent would incur a cost, the LEA may use its Part B funds to pay the cost that the parents otherwise would have to pay to use the parent's insurance (e.g., the deductible or co-pay amounts).

(4) Proceeds from public or private insurance.

(i) Proceeds from public or private insurance will not be treated as program income for purposes of 34 CFR 80.25, Education Department General Administrative Regulations (EDGAR).

(ii) If a LEA spends reimbursements from Federal funds (e.g., Medicaid) for services under IDEA Part B, those funds will not be considered "State or local" funds for purposes of the maintenance of effort provisions in 34 CFR §300.163 Maintenance of State Financial Support and § 300.203 Maintenance of Effort obligation for LEAs.

(5) Nothing in these rules should be construed to alter the requirements imposed on a State Medicaid agency, or any other agency administering a public insurance program by Federal statute, regulations or policy under title XIX, or title XXI of the Social Security Act, 42 U.S.C. 1396 through 1396v and 42 U.S.C. 1397aa through 1397jj, or any other public benefits or insurance program.

2360.5 Early Intervention Services For Infants And Toddlers, Birth to Three Years Of Age: Part C Of the Individuals with Disabilities Education Act

Part C, provides early intervention services for children birth to the third birthday. While Part B of the IDEA provides a FAPE to eligible people from their third birthday through 21 years of age, Part C does not provide a FAPE to its eligible population. The Vermont Department of Education and the Agency of Human Services shall serve as the co-lead agencies in Vermont for the implementation of early intervention services under Part C of the Individuals with Disabilities Education Act (IDEA).

As required by federal law, school districts shall engage in child-find activities to identify children who may require early intervention services.

Information and outreach services such as screening, information and referral, and family support and education shall be available for any family with concerns about their infant or toddler's development.

2360.5.1 Role of Schools/Referral/Core Team

(a) By way of Vermont's Interagency Agreement for the Provision of Early Intervention Services, the role that each school district/supervisory union has in the provision of early intervention services shall be detailed in Regional Plans for Early Intervention. School districts/supervisory unions shall be primary referral sources and participating partners in the provision of early intervention services under Part C – IDEA.

(b) Each region shall designate a "host agency" that serves as the central point of referral for the Children's Integrated Services/Early Intervention (CIS/EI). School districts/supervisory unions receiving referrals for children under the age of three, with parent approval, shall forward the referral to the regional host agency.

(c) School districts/supervisory unions shall be members on the core team comprised of the family, regional early interventionist, school representative, community resource parent, and Children with Special Health Needs (CSHN) medical social worker for children with medical concerns. The core team shall:

(1) Determine who will make the initial visit with a family;

(2) Determine who will provide interim service coordination;

(3) Develop a multidisciplinary evaluation plan based on the family's concerns; and,

(4) Determine eligibility for early intervention services.

2360.5.2 Evaluation

(a) Informed parental written consent shall be required prior to initiating the evaluation process.

(b) A multidisciplinary evaluation shall be completed which includes:

(1) Observation/report/clinical judgments by the core team;

(2) Non-discriminatory and appropriate screening and assessment instruments which may include criterion referenced or norm referenced instruments or screening/development profiles;

(3) A review of pertinent medical records and current health status;

(4) Documentation of a diagnosis or established condition which has a high probability of resulting in developmental delays, when eligibility will be based on a high probability of a developmental delay;

(5) An evaluation of the child's:

(i) Cognitive development,

(ii) Physical development, including vision and hearing,

(iii) Communication development,

(iv) Social or emotional development, and

(v) Adaptive development.

(c) The initial evaluation shall be completed and a meeting held to develop the initial Individualized Family Service Plan (IFSP) for an eligible child within 45 days of the host agency receiving the referral.

(1) If, due to exceptional circumstances, it is not possible to complete the evaluation and assessment and hold the initial IFSP meeting within the forty-five day requirement, the core team shall:

(i) Document attempts to comply.

(ii) Document the exceptional circumstances preventing compliance.

(iii) Develop jointly with parents, strategies and timelines to complete the evaluation.

(2) If early intervention services are determined to be needed immediately before the completion of the evaluation, the core team may develop an interim IFSP which includes:

(i) The name of the service coordinator who shall be responsible for the implementation of the interim IFSP and coordination with other agencies and persons and

(ii) The early intervention services that have been determined to be needed immediately by the child and the child's family.

2360.5.3 Eligibility

(a) Families with children from birth through the third birthday, who have a developmental delay or a diagnosed physical or mental condition which has a high probability of resulting in a developmental delay, are eligible for early intervention services. Eligibility for services shall be based on the following criteria:

(1) Developmental Delay

A developmental delay is a clearly observable and measurable delay in one or more of the following areas: cognitive development, physical development (including hearing and vision), communication development, social-emotional development, or adaptive development, and the delayed development shall be at the level that the child's future success in home, school, or community cannot be assured without the provision of early intervention services.

(2) High probability for developmental delay

(i) A diagnosed physical or mental condition which has a high probability of resulting in a developmental delay. The delay in development may or may not be exhibited at the time of diagnosis.

(ii) Such a condition may include, but is not limited to:

(A) Chromosomal Anomalies/Genetic Disorders. This category can include Down Syndrome, other chromosomal anomalies with known developmental consequences, and genetic disorders such as cystic fibrosis;

(B) Inborn errors of metabolism including infant phenylketonuria (PKU) and hypothyroidism;

(C) Severe Infectious Diseases including prenatally acquired infections such as HIV, or postnatal infections such as meningitis or encephalitis;

(D) Neurological Disorders including neuromuscular disorders, cerebral palsy, seizure disorders and degenerative central nervous system disorders such as Tay Sachs and tuberous sclerosis;

(E) Congenital Malformations including birth defects of the respiratory or central nervous system (e.g., cleft palate, spina bifida) or conditions such as microencephaly or hydrocephalus;

(F) Sensory Disorders including severe hearing loss or deafness and visual loss or blindness;

(G) Severe Attachment and other Atypical Disorders, and Socio-Affective Disorders of Infancy including reactive attachment disorder, autism and pervasive developmental disorder;

(H) Severe Toxic Exposure including prenatal toxic exposure to drugs, postnatal lead poisoning (blood lead levels of 20 g/dl or greater), fetal alcohol syndrome;

(I) Medically Fragile including technology-dependent children with complex health care needs;

(J) Chronic Medical Illness including cancer, diabetes, heart problems, and renal failure;

(K) Severe Complications at Birth - Requires at least 2 of the following conditions to be present:

Birthweight - less than 1500 grams;

Apgar scores at 5 minutes - less than 6;

Intraventricular Hemorrhage (IVH) - Grade III or IV;

Intrauterine Growth Retardation (IUGR) - Symmetrical;

Respiratory Distress Syndrome - RDS;

Gestational Age - less than 32 weeks;

Asphyxiation; and/or

Periventricular Leukomalacia.

(b) Environmentally at Risk

Early intervention funds may be used to identify and evaluate environmentally at-risk infants and toddlers and to make referrals to other appropriate services. Periodic follow-up may be provided, within the limits of funds available, for infants and toddlers who are at-risk for developmental delays but who are determined to be not eligible for early intervention services to determine if the child's status may have changed with respect to eligibility for early intervention services.

(c) Eligibility Determination

(1) The core team shall determine a child's eligibility for early intervention services.

(2) The child's record or IFSP shall clearly reflect the methods or evaluations used to determine eligibility, the eligibility decision, and the participation of the core team in the determination.

(d) Transfer of a Child from Another Region in Vermont

A child determined eligible in one region continues to be eligible in any other region without need for another evaluation or determination of eligibility.

(e) Transfer from Another State

For a child who has previously been found eligible for early intervention services in another state, the Core Team shall review eligibility information from that state to determine if he/she is eligible under Vermont's eligibility definition. If any additional evaluations are needed, parental consent shall be obtained.

2360.5.4 IFSP Meetings and Reviews

(a) IFSP meetings shall be:

(1) Held at least annually;

(2) Held in settings and at times that are accessible and convenient for families;

(3) Held in the native language of the family or other mode of communication used by the family, unless it is clearly not feasible to do so;

(4) Arranged with, and written notice provided to, the family and other participants early enough before the meeting date to ensure that they will be able to attend;

(5) Attended at minimum by:

(i) The parent(s) of the child, and

(ii) The service coordinator.

(6) Also attended by or otherwise include the participation of:

(i) Other family members, as requested by the family;

(ii) An advocate or person outside the family as requested by the family;

(iii) The person(s) directly involved in the evaluation and assessment process; and

(iv) As appropriate, the person(s) who will be providing services to the child and/or the family.

(7) Participation may include:

(i) Sharing information through a telephone call and making pertinent records available; and

(ii) Having a knowledgeable authorized representative attend the meeting.

(b) The IFSP shall be evaluated once a year and a periodic review of the IFSP for a child and the child's family shall occur at least every six months, or more frequently if needed, or requested by the family. The review need not take place at a formal meeting but may occur through other means that are acceptable to the parents and other participants The purpose of the review is to determine:

(1) Progress made toward achieving the outcomes identified in the IFSP, and

(2) Whether modification or revision of the outcomes or services is needed.

2360.5.5 Contents of the IFSP

(a) The contents of the IFSP shall be fully explained to parents and shall include the following:

(1) A statement of the child's present level of development in the areas of physical (including vision, hearing and health status), cognitive, communication, social-emotional, and adaptive development. Present levels of development are based on professionally accepted objective criteria. This information shall be presented in easily understood language.

(2) With the concurrence of the family, a statement of the family's priorities and concerns related to enhancing the development of the child;

(3) A statement of the major family driven outcomes that are expected for the child and the family;

(4) The criteria, procedures and timelines used to determine the degree to which progress toward achieving the outcomes is being made;

(5) A statement of specific early intervention services necessary to meet the unique needs of the child and family to achieve the identified outcomes, including:

(i) The frequency, intensity, and method of delivering the services. Frequency and intensity and method means the number of days or sessions that a service will be provided, the length of time the service is provided during each session, and whether the session is provided on an individual or group basis.

(ii) A statement of the natural environments in which early intervention services shall be provided, including a justification of the extent, if any, to which the services will not be provided in the child's natural environment. Services shall be provided in a setting other than the child's natural environment only if early intervention cannot be achieved satisfactorily for the child in a natural environment. Natural environments, including the home and community, are settings that are natural or normal for the child's age peers who have no disability.

(iii) The location of services; and

(iv) Sources of payment for such services.

(6) As appropriate, a statement of medical and other services or supports which a child or family needs, but that are not early intervention services. The IFSP shall include funding sources that may be used to pay for these services, and if necessary, the steps that will be taken to explore and secure these services and supports.

(7) The projected dates for beginning the early intervention services as soon as possible after the IFSP meeting, and the anticipated duration of services.

(8) The name of the service coordinator who will be responsible for implementing the service plan and coordinating the process among other agencies and/or persons.

2360.5.6 Consent for Early Intervention Services: Termination of Services

(a) Informed written consent by parents is needed before early intervention services may be provided.

(b) Early intervention services may be terminated when the:

(1) Parent requests that all services or any service be terminated;

(2) IFSP team determines that there is no longer a need for all services or any service;

(3) Child is no longer a Vermont resident.

2360.5.7 Transition at Age Three

(a) Parents of children who are in transition to Essential Early Education (EEE) or other preschool services shall be included in all phases of the transition planning and process including participation in transition meetings, site visits, and the development of the transition plan.

(b) Eligibility for EEE Services

(1) A child who received special instruction, developmental therapy services or speech services through an IFSP shall be eligible for EEE without need for additional evaluation.

(2) A child who did not receive special instruction, developmental therapy or speech services through an IFSP, may be eligible for EEE services if the Evaluation and Planning Team determines that the child has a medical condition which may result in significant delays by the time of the child's sixth birthday.

(c) Notification of Transition Meeting(s)

(1) The IFSP service coordinator shall provide written notification to the supervisory union or local school district where the child resides at least six months prior to the child's third birthday. With the permission of the family, the IFSP service coordinator shall convene a meeting or series of meetings that include:

(i) The family;

(ii) School district personnel;

(iii) A representative from Children's Integrated Services/Early Intervention;

(iv) Other IFSP team members or service providers; and

(v) Others who are likely to be involved in service delivery after the child turns three.

(2) The purpose of such meetings is to begin transition planning at least 90 days and up to six months prior to the child's third birthday. A Children with Special Health Needs (CSHN) social worker shall participate in transition planning for children with medical needs enrolled in CSHN programs. Transition meetings may serve as IEP planning and development meetings for children who will transition to EEE services. Families shall be provided information about parental rights and responsibilities, i.e., procedural safeguards, regarding the transition process and EEE.

(d) Transition Plan for Children in Transition to EEE Services

(1) Transition meetings shall result in the development of a comprehensive transition plan that details the necessary steps to enable the child to receive EEE services and/or other preschool services as of the child's third birthday.

(2) The IEP shall be completed no later than the child's third birthday. When a child turns three shortly before the end of the school year or in the summer, the

transition team shall meet to develop the IEP prior to the end of the school year or by the child's third birthday. The child's IEP Planning Team shall include all required components of an IEP which are listed in rule 2363.8.

(e) Records Sent To The EEE Program

With the parent's consent, copies of the following IFSP records shall be sent to the EEE program for the child's district of residence:

(1) Evaluations and information used to determine eligibility;

(2) IFSPs;

(3) Pertinent contact notes; and

(4) A signed consent from the parent to release information to the program.

(f) Consent to EEE Placement

For children who transition to EEE services, the parent shall be asked to consent to EEE placement for the period of time between age 3 and the date the initial evaluation under Part B is due. Initial consent for evaluation and placement under Part B shall occur when the initial evaluation for early intervention expires after 3 years or sooner if requested by the parent or responsible agency.

(g) Records

(1) Children's Integrated Services/Early Intervention records shall be the property of the co-lead agencies, the Vermont Department of Education and Agency of Human Services. The child's record at the host agency shall be the central record for children referred for early intervention services. Records at the host agency shall contain the following:

(i) Record of Access;

(ii) Consents for Release of Information;

(iii) Consent for Evaluation;

(iv) Documentation that parental rights have been given in writing and explained verbally;

(v) Evaluation reports or summaries used to determine eligibility;

(vi) Eligibility form;

(vii) Written notice of IFSP meetings;

(viii) The most recent and previous IFSPs;

(ix) Information related to IFSP reviews; and

(x) Information related to transition planning

(2) Additional components of the child's record may be maintained by service providers as indicated on the IFSP.

2360.5.8 Procedural Safeguards.

If a parent disagrees with the decisions made by the core team in subsection (c) of Rule 2360.5.1 the parent may pursue informal dispute resolution options or may utilize the appeal process set forth in Rule 2365.

ELIGIBILITY FOR SPECIAL EDUCATION, AGES THREE THROUGH TWENTY ONE
Pursuant to the Individuals with Disabilities Education Improvement Act, Part B

2361 Essential Early Education (EEE) Eligibility of Children Age Three Years Up To the Sixth Birthday

(a) A child age three years up to the sixth birthday shall be eligible for EEE if the child meets at least one of the following:

(1) Determined to be eligible under Rule 2360.5.7(b);

(2) After evaluation by an evaluation and planning team (EPT), the EPT finds that the child has a disability caused by a developmental delay and the child needs special education;

(3) The child has a medical condition which may result in significant delays, and the child needs special education;

(4) The child meets the eligibility criteria for children 6 through 21 pursuant to Rule 2362, including determination of a disability, adverse effect on educational performance and need for special education.

(b) For the purposes of this section, “medical condition” means a condition diagnosed by a licensed physician such as autism, cerebral palsy, Down Syndrome, attention deficit disorder with hyperactivity that may result in significant delays by the child's sixth birthday.

(c) For the purposes of this section, “developmental delay” is determined through an evaluation which consists of two assessments, one of which is a norm referenced assessment, where the child demonstrates at least a 40% delay in one or more of the following areas or exhibits a 2.0 standard deviation at, or below the mean (2nd percentile) in one of the following areas; or a 1.5 standard deviation at, or below the mean (7th percentile) in two or more of the following areas:

(1) Receptive and/or expressive communication;

(2) Adaptive development;

(3) Social or emotional development;

(4) Physical development including gross or fine motor skills; or

(5) Cognitive skills such as perception, memory, processing and reasoning.

(d)The administration of any assessments shall be in compliance with the evaluation requirements of Rule 2362.2.1.

(e) The percentage delay in a child's performance on a norm referenced assessment may be measured by dividing the child's age equivalent score in months by the child's actual age in months, and then multiplying the quotient by 100. The result is then subtracted from 100 to determine the child's percentage of delay.

2361.1 Transition for Children Moving into Kindergarten

In order to ensure a smooth transition to kindergarten, the IEP team shall:

(a) Meet three to six months prior to the child's entrance into kindergarten to ensure that an IEP is ready to be implemented at the beginning of the school year.

(b)Include in the meeting the parents of the child with a disability, a kindergarten teacher in whose school the child will be placed, and a special education teacher or other school representative from the LEA who is:

(1) Knowledgeable about the LEA's resources;

(2) Qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities; and

(3) Knowledgeable about the general education curriculum.

(4) Other individuals with knowledge or special expertise regarding the child may be included in the meeting.

2361.2 Educational Placement in the Least Restrictive Environment (LRE)

In determining the educational placement of a preschool child with a disability, each LEA shall ensure that:

(a) The placement decision shall be made by the IEP team in conformity with the provisions regarding placement in the least restrictive environment set forth in Rule 2364.

(b) The child's placement shall be:

(1) Determined at least annually;

(2) Based on the child's IEP;

(3) In as close proximity as possible to the child's home; and

(4) Based on consideration of community based early care and education settings such as a childcare, or Head Start.

2361.3 IEP Content

The content of the child's IEP shall be as set forth in rule 2363.8. For preschoolers, the IEP may also address how the child's disability affects his or her participation in developmentally appropriate play activities.

2362 Eligibility for Children Ages Six Years through Twenty One (34 CFR §300.306)

(a) A child shall be eligible for special education if:

(1) He or she has one or more of the disabilities described in Rule 2362.1;

(2) The disability results in an adverse effect on the child's educational performance in one or more of the basic skill areas as described in subsection (g), below; and

(3) The child needs special education services to benefit from his or her educational program and this support cannot be provided through the educational support system, standard instructional conditions or supplementary aids and services provided in the school.

(b)The three criteria listed in section (a) above shall also be applied at the time the child receives a re-evaluation to determine eligibility.

(c)A formal evaluation process, documented in a report as required by Rule 2362.2.5, shall be used to determine whether the above criteria are met.

(d)Adverse Effect.

(1) To conclude that a disability has an adverse effect on the child's educational performance, the EPT shall determine and document that, as a result of his or her disability, the child is functioning significantly below grade norms compared to grade peers in one or more of the basic skills defined in Rule 2362(g).

(2) "Significantly below grade norms" means the 15th percentile or below, or a 1.0 standard deviation or more below the mean, or the equivalent, as reflected by performance on at least three of the six following measures of school performance, generally over a period of time:

(i) Individually administered nationally normed achievement test;

(ii) Normed group administered achievement tests, including nationally normed curriculum-based measures;

(iii) Grades;

(iv) Curriculum-based measures which could include benchmark assessments and continuous progress monitoring outcomes;

(v) Criterion-referenced or group-administered criterion- referenced assessments;

(vi) Student work, language samples or portfolios.

(3) With respect to each basic skill considered, the EPT shall specifically identify in its report:

(i) Each type of measure considered by the Team;

(ii) The finding of the Team, with respect to each measure considered, as to whether and why the measure met (or did not meet) the 15th

percentile, -1.0 standard deviation, or equivalent standard, in order to support a finding of adverse effect;

(iii) The specific testing data/scores, Student work, and/or education records relied upon by the Team to support its finding under subparagraph (ii) that a measure did or did not meet the standard; and

(iv) A statement of each basic skill area in which the disability was determined to have an adverse effect, based upon (i)-(iii).

(e) A child may not be determined to be eligible under these rules if the determinant factor for that eligibility decision is lack of instruction in reading, including the essential components of reading instruction (phonemic awareness, phonics, fluency including oral reading skills, vocabulary development, reading comprehension strategies), or math, or limited English proficiency; and the child does not otherwise meet the eligibility criteria of these rules.

(f) If a child has a disability that results in an adverse effect on his or her educational performance in one or more of the basic skills, the EPT shall, in the following order:

(1) Consider the interventions, services, and accommodations the child may need, and

(2) Determine and provide justification that the child requires specially designed instruction that cannot be provided within the school's standard instructional conditions, or provided through the school's educational support system.

(g) Basic skill areas—

(1) Unless otherwise specified in the disability category in these rules, basic skill areas are:

(i) Oral expression;

(ii) Listening comprehension;

(iii) Written expression;

(iv) Basic reading skills;

(v) Reading comprehension;

(vi) Mathematics calculation;

(vii) Mathematics reasoning.

(2) For an individual with a sensory impairment, one or more comparable basic skills shall be considered to serve as an appropriate substitute for one or more of the above basic skills, for example, Braille skills for basic reading skills.

(3) The screening of a child by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

2362.1 Categories of Disability

The existence of one or more of the following categories of disability shall be established according to the criteria set forth below.

(a) ***Autism Spectrum Disorder*** means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three.

(1) Included in the spectrum are: autism, pervasive developmental disorder – not otherwise specified, Rett's Disorder, Asperger's Disorder, and childhood disintegrative disorder.

(2) Other characteristics often associated with autism spectrum disorder are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. Characteristics vary from mild to severe as well as in the number of symptoms present. Autism spectrum disorder does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in Rule 2362.1(h).

(3) A child who manifests the characteristics of autism spectrum disorder after age three could be identified as having autism spectrum disorder if the criteria in subsection (1) & (2) are satisfied.

(4) The EPT shall obtain an opinion of a licensed psychologist and/or medical physician who have training and experience in understanding autism spectrum disorders and other developmental disorders as to the existence of an autism spectrum disorder and its effect on the child's ability to function and whether there is an adverse effect on the child's educational performance.

(b) ***Deaf-blindness*** means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

(c) ***Emotional Disturbance*** means a condition including schizophrenia, exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance.

(1) Characteristics of an emotional disturbance:

(i) An inability to learn that cannot be explained by intellectual, sensory, or health factors.

(ii) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(iii) Inappropriate types of behaviors or feelings under normal circumstances.

(iv) A general pervasive mood of unhappiness or depression.

(v) A tendency to develop physical symptoms or fears associated with personal or school problems.

(2) A child who is socially maladjusted shall not be considered to be emotionally disturbed unless, he or she also meets the definition of emotional disturbance as set forth in subdivision (1). A social maladjustment is a persistent pattern of violating societal norms, such as multiple acts of truancy, or substance or sex abuse, and is marked by struggle with authority, low frustration threshold, impulsivity, or manipulative behaviors. A social maladjustment unaccompanied by an emotional disturbance is often indicated by some or all of the following:

(i) Unhappiness or depression that is not pervasive;

(ii) Problem behaviors that are goal-directed, self-serving and manipulative;

(iii) Actions that are based on perceived self-interest even though others may consider the behavior to be self-defeating;

(iv) General social conventions and behavioral standards are understood, but are not accepted;

(v) Negative counter-cultural standards or peers are accepted and followed;

(vi) Problem behaviors have escalated during pre-adolescence or adolescence;

(vii) Inappropriate behaviors are displayed in selected settings or situations (e.g., only at home, in school or in selected classes), while other behavior is appropriately controlled; and/or

(viii) Problem behaviors are frequently the result of encouragement by a peer group, are intentional, and the child understands the consequences of such behaviors.

(3) The EPT shall obtain an opinion of a licensed psychologist or psychiatrist as to the existence of an emotional disturbance and its effect on the child's ability to function, based on the above criteria.

(4) Upon determination of the existence of an emotional disturbance disability, the parent shall be informed of the availability of interagency coordination of services, as defined by 33 V.S.A. §4301 et seq.

(d) ***Hearing Impairment*** means an impairment in hearing as determined by an audiologist, otologist, or otolaryngologist, and demonstrated by a 25 decibel HL threshold (ANSI, 69) or worse for one or more of the frequencies 250-8000HZ, in one or both ears, with or without amplification.

(e) ***Learning Impairment*** means a delay in learning of sufficient magnitude to cause a child's performance to fall at or below -1.5 standard deviations from the mean of a test of intellectual ability, existing concurrently with deficits in adaptive behavior.

(f) ***Multiple Disabilities*** means concomitant impairments (such as learning impairment-blindness or learning impairment-orthopedic impairment) (etc.), the combination of which causes such severe educational needs that they cannot be

accommodated in special education programs solely for one of the impairments. Multiple disabilities does not include deaf-blindness.

(g) ***Orthopedic Impairment*** includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures). The EPT shall obtain an opinion from a licensed physician as to the existence of the orthopedic impairment and its effect on the child's ability to function.

(h) ***Other Health Impairment*** means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that:

(1) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, non-verbal learning disability and/or Tourette syndrome; and adversely affects a child's educational performance.

(2) In order to determine the existence of an other health impairment and its effect on the child's ability to function, the EPT shall obtain an opinion from a person:

(i) Whose professional licensure authorizes him or her to offer an opinion on the existence of the specific condition suspected to be an other health impairment and its effect on the child's ability to function, and

(ii) Who has specific training and experience in diagnosing and recommending treatment for the specific condition suspected.

(i) ***Specific Learning Disability*** means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia that adversely affects a child's educational performance.

(1) Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of learning impairment, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(j) ***Speech or Language Impairment*** means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment that adversely affects a child's educational performance and shall be demonstrated by significant deficits in listening comprehension or oral expression. The EPT shall obtain an opinion from a licensed speech-language pathologist as to the existence of a speech or language impairment and its effect on the child's ability to function. The determination of a speech or language impairment shall be based on the following criteria:

(1) Listening comprehension. A significant deficit in listening comprehension exists when a child demonstrates at least 2.0 standard deviations below the test mean on at least one composite score and other measures of auditory processing or comprehension of connected speech. Auditory processing or comprehension include:

(i) phonology,

(ii) morphology,

(iii) syntax,

(iv) semantics, or

(v) pragmatics.

(2) Oral Expression. For purposes of determination of a speech and language impairment, a significant deficit in oral expression exists when a child demonstrates one or more of the following conditions:

(i) Voice. A significant deficit in voice exists when both of the following are present:

(A) Documentation by an otolaryngologist that treatment is indicated for a vocal pathology or speech related medical condition, and

(B) Abnormal vocal characteristics in pitch, quality, nasality, volume or breath support, which persist for at least one month.

(ii) Fluency. A significant deficit in fluency exists when the child exhibits one or more of the following behaviors:

(A) Part word repetitions or sound prolongations occur on at least 5% of the words spoken in two or more speech samples, or

(B) Sound or silent prolongations exceed one second in two or more speech samples, or

(C) Secondary symptoms or signs of tension or struggle during speech which are so severe as to interfere with the flow of communication.

(iii) Articulation. A significant deficit in articulation attributed to an organic or functional disorder exists when a child is unable to articulate two or more of the unrelated phonemes in connected speech, set forth below, and it is not attributed to dialect or second language difficulties.

Age	Phonemes

6.0 – 6.11	m, n, h, w, p, b, t, d, k, g, f, v (y), (ch), (th) as in the word "mother", (sh) and "j" as in jump
7.0 – 7.11	(th) as in the word "thin", "l"
8.0 and above	s, z, r, (zh) as in "measure", ng and consonant blends with s, l, and r

(iv) Oral Discourse. A significant deficit exists when a child demonstrates a deficit of at least 2 standard deviations below the test mean on at least one composite score and other measures of oral discourse. Oral discourse includes:

(A) phonology,

(B) morphology,

(C) syntax,

(D) semantics, or

(E) pragmatics

(k) ***Traumatic Brain Injury*** means an injury to the brain caused by an external physical force or by an internal occurrence such as a stroke or aneurysm, resulting in total or partial functional disability or psychosocial impairment, or both. The EPT shall obtain an opinion of a licensed physician as to the existence of a traumatic brain injury and its effect on the child's ability to function, as defined by the following criteria:

(1) The condition includes open or closed head injuries resulting in impairments in one or more areas, including cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual and motor abilities; psychosocial behavior; physical functions; information processing; and speech.

(2) The condition does not include brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

(l) ***Visual Impairment*** including blindness means an impairment in vision as evaluated by an optometrist or ophthalmologist, demonstrated by central visual acuity that is 20/70 or worse in the better eye with correction, or a peripheral field that subtends an angle not greater than 20 degrees at its widest diameter. For the purposes of this disability, mobility and orientation shall also be considered to be special education services. The term includes both partial sight and blindness.

2362.2 Procedures for Evaluation and Determination of Eligibility

(a) For purposes of this section, "evaluations" are defined as observations, tests and other diagnostic measures, individually selected and administered to determine the existence of a disability, the effect the disability has on the child's educational and functional performance, the need for specialized services, and for an appropriate program. An evaluation is a compilation of information that is designed to assist:

(1)The EPT in determining eligibility for special education;

(2)The IEP team in developing the child's individualized educational program including special education services, and as required, related services, transition services, assistive technology, supplementary aids and services; and

(3) The IEP team in determining an appropriate placement in the least restrictive environment.

(b) The screening of a child by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services. (34 CFR §300.302)

2362.2.1 Initial Evaluations (34 CFR §300.301)

Either a parent of a child, or a LEA, or the Vermont Department of Education, or other State agency, may initiate a request for an initial evaluation to determine if the child is eligible for special education and related services.

(a) Each LEA shall conduct a comprehensive and individual initial evaluation, before the initial provision of special education and related services to a child with a disability under these rules.

(b)The initial evaluation shall be completed and the report issued within 60 days from either:

(1) The date parental consent has been received by the LEA.

(2) The date on the LEA's notice, which informs parents that it will be reviewing existing data as the sole basis for the initial evaluation.

(c) If completion of the initial evaluation will be delayed for a period exceeding 60 days as specified in sections (b)(1) and (2) above, the parent shall be given written notice of the delay and a schedule of evaluation activities. Such notice shall be sent to a parent before the expiration of the 60 day period. A notice of delay shall only be used for exceptional circumstances related to the child and/or family, which shall be documented.

(d)Consent shall be obtained before individual tests can be administered to children who receive special education services unless the assessment is being administered as an alternate assessment to district-wide or statewide assessments.

(e)The 60 day time limit for the completion of an initial eligibility evaluation identified in section (b) shall not apply to an LEA if the parent of a child repeatedly fails or refuses to make a child available for the evaluation or if:

(1) A child moves to a new LEA before the eligibility evaluation in the old LEA has been completed;

(2) The new LEA is making sufficient progress to ensure a prompt completion of the evaluation; and

(3) The parent and new LEA have agreed to the specific time when the evaluation will be completed.

2362.2.2 Re-evaluation Requirements (34 CFR §300.303)

(a) The LEA shall ensure that a re-evaluation of each child with a disability is conducted:

(1) If the LEA determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a re-evaluation; or

(2) If the child's parent or teacher requests a re-evaluation.

(b) A re-evaluation conducted under sub-section (a):

(1) May occur not more than once a year, unless the parent and the LEA agree otherwise; and

(2) Shall occur at least once every 3 years, unless the parent and the LEA agree that a re-evaluation is unnecessary.

2362.2.3 Evaluation Procedures

(a) The LEA shall provide notice to the parents of a child with a disability in accordance with 2365.1.1 that describes any evaluation procedures the LEA proposes to conduct.

(b) In conducting the evaluation, the LEA shall:

(1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining:

(i) Whether the child is eligible for special education services; and

(ii) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);

(2) Not use any single measure or assessment as the sole criterion for determining special education eligibility and for determining an appropriate educational program for the child; and

(3) Assess all child characteristics and other factors that may have a significant influence on eligibility, services to be offered or accommodations to be made, including, but not limited to:

(i) Physical characteristics:

(A) Vision

(B) Hearing

(C) Health

(D) Medical

(E) Nutrition

(ii) Social, behavioral, or emotional characteristics:

(A) Self-esteem

(B) Self-control

(C) Interaction with peers and adults

(iii) Adaptive behavior across settings:

(A) Independence skills

(B) Coping skills

(C) Self-care skills

(iv) Relevant life circumstances:

(A) Family

(B) Community

(C) Environmental factors

(v) Speech characteristics:

(A) Articulation

(B) Fluency

(C) Voice

(vi) Language and communication skills

(vii) Intellectual or cognitive characteristics:

(A) Learning abilities

(B) Learning styles

(C) Reasoning

(viii) Areas of concern in the basic skills areas:

(A) Oral expression

(B) Listening comprehension

(C) Written expression

(D) Basic reading skills

(E) Reading comprehension

(F) Mathematics calculation

(G) Mathematics reasoning

(H) Motor skills

(ix) Vocational needs

(x) Skills in the learning environment

(xi) Assistive technology needs related to devices and services

(xii) The EPT shall assess the child's current level of performance in all curriculum areas with respect to which special education, related services and supplementary aids and services may be required.

(4) Ensure that assessments and other evaluation materials used to assess a child are:

(i) Selected and administered so as not to be discriminatory on a racial or cultural basis;

(ii) Provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to provide or administer;

(iii) Used for the purposes for which the assessments or measures are valid and reliable;

(iv) Administered by trained and knowledgeable personnel;

(v) Administered in accordance with any instructions provided by the producer of the assessments;

(vi) Those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient; and

(vii) Selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

(5) Ensure that assessments of children with disabilities who transfer from one LEA to another LEA in the same academic year are coordinated with such children's prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.

(6) Ensure that the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been found eligible.

(7) Ensure that assessment tools and strategies provide relevant information to directly assist the IEP team in determining that the educational needs of the child are provided.

(c) As part of an initial evaluation (if appropriate) and as part of any re-evaluation under this part, the EPT and other qualified professionals, as appropriate, shall:

(1) Review existing evaluation data on the child, including:

(i) Evaluations and information provided by the parents of the child;

(ii) Current classroom-based, local, or State assessments, and classroom-based observations; and

(iii) Observations by teachers and related services providers.

(2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine:

(i)Whether the child is or continues to be eligible for special education and related services;

(ii) The present levels of academic achievement and related developmental needs of the child; and

(iii) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

(d) The EPT may conduct its review without a meeting.

(1) If a parent requests that the EPT review data through a formal meeting, then a formal meeting with required notices shall be held.

(2) A formal meeting shall be required whenever the initial eligibility of the child will be determined. When a satisfactory agreement on such time or place cannot be reached, the LEA shall use other, mutually agreed upon methods, to ensure parent participation, including individual or conference telephone calls, or video conferencing.

(e) The LEA shall administer such assessments and other evaluation measures as may be needed to produce the data identified under paragraph (c) of this section.

(f) If the EPT determines that no additional data are needed to determine whether the child continues to be eligible for special education and related services, the LEA shall notify the child's parents of:

(1) That determination and the reasons for the determination; and

(2) The right of the parents to request additional testing to determine eligibility.

(i) The LEA is not required to conduct additional testing unless requested to do so by the child's parents.

(g) The LEA shall evaluate a child before determining that the child is no longer eligible for special education and related services, unless the termination of a youth's eligibility is due to graduation from secondary school with a regular diploma, or due to reaching the age of 22.

(1) Under these circumstances, the LEA shall provide the youth with a summary of performance which shall include recommendations on how to assist the youth in meeting the youth's postsecondary goals.

(2) The LEA shall send a notice to the youth and his/her parent(s) that a change of placement is scheduled to occur and give the reasons why.

(h)Prior to conducting an initial or re-evaluation for eligibility purposes, the EPT shall complete a written evaluation plan which lists the areas to be assessed, the procedures to be used in carrying out the evaluation, and personnel by title responsible for performing the evaluations. All EPT members shall have the opportunity to provide input in the development of the written evaluation plan.

2362.2.4 Additional Procedures for Identifying Children with Specific Learning Disabilities (34 CFR §§300.307-300.311)

(a) In making the determination that a child has a specific learning disability the LEA shall decide whether to use a discrepancy model or a model based on whether the child responds to scientific, research based intervention.

(1) When using a discrepancy model, the EPT shall document that the child exhibits a discrepancy of 1.5 standard deviations or greater between ability and expected levels of performance in one or more of the basic skill areas.

(2) When using a model based on whether the child responds to scientific, research based intervention the EPT shall document use of the following:

(i) High-quality instruction and scientific research-based tiered interventions aligned with individual child need;

(ii) Frequent monitoring of child progress to make results-based academic decisions; and

(iii) Child's response data to evaluate the effectiveness of interventions.

(b) The determination of whether a child has a specific learning disability shall be made by the EPT, which shall include the following additional members:

(1) The child's general education teacher; or if the child does not have a general education teacher, a classroom teacher qualified to teach a child of his or her age; or

(2) For a child of less than school age, an individual licensed by the Vermont Department of Education to teach a child of his or her age; and

(3) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, special education teacher or remedial reading teacher.

(c) The EPT may determine that a child has a specific learning disability if:

(1) When provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards, the child does not achieve adequately in one or more of the following areas:

(i) Oral expression

(ii) Listening comprehension

(iii) Written expression

(iv) Basic reading skill

(v) Reading fluency skills

(vi) Reading comprehension

(vii) Mathematics calculation

(viii) Mathematics reasoning.

(2) The child does not make sufficient progress to meet age or State approved grade-level standards in one or more of the areas identified in (c)(1) when using either a discrepancy model or a model based on whether the child responds to scientific, research based intervention.

(3) The EPT determines that its findings under paragraphs (c)(1) and (2) of this section are not primarily the result of:

(i) A visual, hearing, or motor disability;

(ii) Learning impairment;

(iii) Emotional disturbance;

(iv) Cultural factors;

(v) Environmental or economic disadvantage; or

(vi) Limited English proficiency.

(d) To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the EPT shall consider, as part of the evaluation, the following:

(1) Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in general education settings, delivered by qualified personnel; and

(2) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of a child's progress during instruction, which was provided to the child's parents.

(e) The LEA shall promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and shall adhere to the timeframes described in Rule 2362.2.1 unless extended by mutual written agreement of the child's parents and other members of the EPT if:

(1) Prior to a referral, a child has not made adequate progress after an appropriate period of time when provided scientifically research based instruction/intervention; and

(2) Whenever a child is referred for an evaluation.

(f) At least one member of the child's EPT, other than the child's current teacher, who is trained in observation, shall observe the child, and the learning environment, including the general classroom setting, to document academic performance and behavior in the areas of difficulty.

(1) Children who are enrolled in a program of home study or who receive instruction delivered in a home, hospital, preschool, childcare setting or other out of school setting shall be observed in instructional environments appropriate for children of that age, by trained personnel who are not the teacher. This observation shall be reported in writing to the EPT.

(2) If, after reasonable efforts have been made, it is not possible to conduct a classroom observation due to chronic truancy or other extenuating circumstances, there shall be documentation of efforts made to observe the child in an instructional environment.

2362.2.5 Evaluation and Planning Team Report

(a) When all necessary information is collected, the EPT shall prepare a written report that documents whether the child is eligible. When a child is found eligible, the report shall be available for use by the IEP team in program planning. The report shall include the following and shall be provided to the parent by the EPT:

(1) A conclusion supported by a rationale as to whether or not the child is eligible for special education based on the following:

(i) The presence or absence of a disability;

(ii) If there is a disability, whether it has an adverse effect on educational performance in one or more of the basic skill areas; and

(iii) Whether the child needs special education services to benefit from his or her educational program and that this support cannot be provided through the educational support system, standard instructional conditions or supplementary aids and services provided in the school.

(2) The evaluation procedures used including:

(i) A Description of any modifications or changes made from the evaluation procedures specified in the evaluation plan; or

(ii) Changes which were necessary in test administration as described in Rule 2362.2.1;

(3) A summary of all educationally relevant information collected during the evaluation, including educational, medical and psychological information and a summary of other factors considered;

(4) Recommendations as to the need for accommodations in curriculum, assessments, material, or programmatic adaptation, behavior management interventions, supplemental aids and services;

(5) The initials of all team members indicating agreement or disagreement with the eligibility conclusion. A group member who does not agree with the

conclusion shall submit a separate statement presenting his or her conclusions and this statement shall become part of the Evaluation Plan and Report; and

(6) The written report of an observation of the child, if an observation has been conducted.

(b) For a child suspected of having a specific learning disability, the evaluation report shall include documentation of:

(1) Whether the child has a specific learning disability;

(2) The basis for making the determination, including an assurance that the determination has been made in accordance with Rules 2362.2.3 and 2362.2.4.

(3) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;

(4) Any educationally relevant medical findings;

(5) Whether:

(i) The child does not achieve adequately for the child's age or to meet Vermont grade-level standards in one or more of the basic skill areas, when provided with learning experiences and instruction appropriate for the child's age or grade level expectations; and

(ii) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, Vermont standards and grade level expectations or intellectual development consistent with the characteristics of a specific learning disability.

(6) The determination of the EPT concerning the effects of visual, hearing, or motor disability; learning impairment; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and

(7) If the child has participated in a process that assesses the child's response to scientific, research-based intervention:

(i) The instructional strategies used and the child-centered data collected; and

(ii) The documentation that the child's parents were notified about:

(A) The amount and nature of their child's performance data that would be collected and the general education services that would be provided;

(B) Strategies for increasing the child's rate of learning; and

(C) The parents' right to request an evaluation.

2362.2.6 Children Who Are Determined to Have a Disability, But Are Not Eligible for Special Education

(a) When an EPT determines that a child has a disability, but is not eligible for special education, it shall recommend accommodations, as needed, in such areas as assessment procedures, curriculum, material or programmatic adaptations, behavior

management interventions, and supplemental aids and services. These recommendations shall be included in the written Evaluation Plan and Report. The Evaluation Plan and Report for such a child shall be referred to the child's building administrator who shall arrange for a Section 504 Team to consider whether:

(1) The child's disability and needs will require a Section 504 Plan or

(2) The child's needs can be met within the school's standard instructional conditions and through its educational support system.

(b)If the EPT determines that the child has a disability, but is not eligible for special education, it may proceed to operate as a Section 504 team to determine whether the child is eligible for reasonable accommodations under Section 504.

2362.2.7 Independent Educational Evaluation (34 CFR §300.502)

An "independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the LEA responsible for the education of the child in question.

(a) Upon completion of a LEA evaluation, a parent may request an independent educational evaluation at public expense if he or she disagrees with the evaluation obtained by the LEA. Except as provided in this rule, the LEA shall either pay the full cost of the requested evaluation, or ensure that the evaluation is otherwise provided at no cost to the parent.

(b) A parent is entitled to only one independent educational evaluation at public expense for each evaluation performed by the LEA with which the parent disagrees.

(c) If a parent requests an independent educational evaluation, the LEA shall, without unnecessary delay, either:

(1) Initiate a hearing to show that its evaluation is appropriate; or

(2) Ensure that an independent educational evaluation is provided at no cost to the parent.

(d) A LEA shall provide to a parent who requests an independent educational evaluation, information about where such an evaluation may be obtained.

(e) Any LEA criteria, under which an independent evaluation may be obtained, including the location of the evaluation and the qualification of the examiner, shall be the same as the criteria that the LEA uses when it initiates an evaluation. Criteria established by a LEA under this section shall not interfere with the parent's right to an independent educational evaluation.

(f) Except as provided in (d) above, timelines or conditions related to obtaining an independent educational evaluation may not be imposed by the LEA.

(g) A LEA may pursue mediation or a due process hearing to demonstrate that an independent educational evaluation obtained by a parent does not meet LEA criteria.

(h) If the LEA initiates a hearing and the final decision is that the district's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at the LEA's expense.

(i) If a parent requests an independent educational evaluation, the LEA may ask for the parent's reason why he or she objects to the district's evaluation. However, an explanation by the parent may not be required, and the LEA may not unreasonably delay either providing the independent educational evaluation at no cost to the parent or initiating a due process hearing to defend the district's evaluation.

(j) A parent is entitled to only one independent educational evaluation at public expense for each evaluation performed by the LEA with which the parent disagrees.

(k)If the parent obtains an independent educational evaluation at public or private expense, the results of the evaluation:

(1) Shall be considered by the LEA's EPT, if the evaluation meets the district's criteria, whenever it makes any decision with respect to the provision of FAPE to the child; and

(2) May be presented as evidence at a hearing regarding the child.

(l) If a hearing officer requests an independent educational evaluation as part of a hearing, the LEA is responsible for ensuring that the independent evaluation is completed at no cost to the parent.

2363 Individualized Education Programs (IEP)

2363.1 Individualized Education Programs (34 CFR §300.320)

The term 'individualized education program' or 'IEP' means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with this rule and includes:

(a) A description of all special education services, related services, and supplementary aids and services that the child will need to be able to derive benefit from his or her educational program;

(b) A description of the special education program; and

(c) Accommodations and/or modifications necessary for the child to progress in the general education curriculum.

2363.2 Timelines (34 CFR §300.323)

An IEP shall be:

(a) Developed within thirty days of an initial determination that the child is eligible for special education and related services;

(b) Revised, as appropriate, to address the results of any re-evaluation for special education and related services.

(c) In effect before special education and related services are provided to the child;

(d) In effect at the beginning of each school year unless the child has been determined to be eligible within 30 days prior to the first day of school, in which case subparagraph (a) above applies; and

(e) Implemented as soon as possible following the IEP meeting.

2363.3 Responsibility of LEAs for IEPs

Except as otherwise provided by these rules, each LEA shall ensure that an IEP is developed and implemented by the responsible LEA for each eligible child residing and attending public school in that district.

2363.4 IEP Team (34 CFR §300.321)

(a) The LEA shall ensure that the IEP team for each eligible child includes:

(1) A local education agency representative (LEA Representative) who:

(i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;

(ii) Is knowledgeable about the general curriculum;

(iii) Is knowledgeable about the availability of resources of the LEA;

(iv) An LEA representative may designate any LEA personnel member of the IEP Team to also serve as the LEA representative, if the criteria in subsections (i), (ii) and (iii) are satisfied; and

(2) Not less than one special education teacher of the child, or if appropriate, not less than one special education service provider for the child;

(3) Not less than one general education teacher of the child, to the extent appropriate, if the child is, or may be, participating in the general education environment. The teacher shall, to the extent appropriate, participate in the development of the IEP of the child including the determination of appropriate positive behavioral interventions and strategies, supplementary aids and services, program modifications, supports for school personnel that will be provided to allow the child an opportunity for participation and progress in the general curriculum and the attainment of annual IEP goals;

(4) At the discretion of the parent or the LEA, other individuals who, in the opinion of the parents or LEA, have knowledge or special expertise regarding the child, including related services personnel, as appropriate;

(5) An individual who can interpret the instructional implications of evaluation results, who also may be a member of the team as described in sections (1), (2), (3) and (4) above;

(6) The parent(s), guardian or educational surrogate parent of the child;

(7) If appropriate, the child;

(8) In the case of a child with a specific learning disability, at least one person qualified to conduct individualized diagnostic examinations of children, such as a school psychologist, speech-language pathologist, special education teacher, or remedial reading teacher: and

(9) In the case of a child previously served under the Children's Integrated Services/Early Intervention Program (Part C), at the request of the parent, the Part C service coordinator or other representatives of the Part C system may be

invited to assist in the smooth transition of special education services. Parents shall be notified of their right to request such an invitation.

(b) Additional participants when the transition services of the child will be discussed.

(1) Not later than the IEP to be in effect when a youth is age 16 (or younger, if determined appropriate by the IEP team), the LEA shall continue inviting the youth to attend his/her IEP meetings to discuss transition services.

(2) If the youth does not attend the IEP meeting when invited, the LEA shall take other steps to ensure that the youth's preferences and interests are considered.

(3) In implementing the requirements with respect to transition services, the LEA also shall invite a representative of any other agency that is likely to be responsible for providing or paying for such services.

(4) If an agency invited to send a representative to a meeting does not do so, the LEA shall take other steps to obtain participation of the other agency in the planning of any transition services.

(c) IEP Team attendance

(1) A member of the IEP Team is not required to attend an IEP meeting, in whole or in part, if the parent of the child and the local educational agency agree, in writing, that the attendance of such member is not necessary because the member's area of curriculum or related services is not being modified or discussed in the meeting.

(2) A member of the IEP Team may be excused from attending an IEP meeting, in whole or in part, when the parent and local education agency agree, in writing, that a team member may be excused from the IEP meeting in which the member's area of curriculum or related services is being discussed. This agreement requires that the excused member submit, in writing to the parent and IEP Team, their input into the IEP development prior to the IEP meeting.

(d) Decisions by the IEP team

If the team cannot reach consensus, the LEA Representative shall determine the contents of the IEP pursuant to Rule 2363.8 and shall notify the parents of their rights to revoke consent pursuant to Rule 2363.9(e), seek mediation, file an administrative complaint or request a due process hearing.

2363.5 Parent Participation in IEP Meeting (34 CFR §300.322)

(a) Each LEA shall take steps to ensure that one or both of the parents of a child with a disability are present at each IEP meeting or are afforded the opportunity to participate, including:

(1) Notifying the parents of the meeting early enough that they will have an opportunity to attend; and

(2) Scheduling the meeting at a mutually agreed upon time and place.

(i) The LEA shall schedule meetings with parents at a mutually agreed upon time and place. When a satisfactory agreement on such time or place cannot be reached, the district shall use other, mutually agreed upon methods to ensure parent participation, including individual or conference telephone calls, or video conferencing.

(ii) When the district is unable to arrange the parents' participation, the district shall convene the IEP meeting to meet its obligation to provide appropriate services to the child as set forth in rule 2363.2 of this section.

(b) A meeting may be conducted without a parent in attendance, if the LEA is unable to convince the parent to attend. Under these circumstances, the LEA shall maintain a record of at least three 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;

(2) Copies of correspondence including emails sent to the parents and any responses received; and

(3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(c) The LEA shall take whatever action is necessary to ensure that the parent understands the proceedings at the IEP meeting, including arranging for an interpreter for a parent who is deaf or whose native language is other than English.

(d) When the youth reaches age 17, the LEA shall notify the parent and the youth that at age 18, the youth, unless he/she is under guardianship, will become an adult under Vermont law. At that time, the LEA shall send a notice to the youth of his/her IEP meetings. The parent shall be given a copy of the notice unless the youth is incarcerated. When a youth becomes an adult, the parents may attend an IEP meeting at the discretion of the youth pursuant to Rule 2363.4(a)(4).

(e) A teacher or parent may request an IEP meeting at any time when they believe a component of the IEP should be changed. When the LEA receives the request:

(1) The LEA shall convene a properly notified IEP meeting within 30 days of receipt of the request, not counting days between the child's regular school sessions or days of school vacation in excess of 5 school days, or

(2) Refuse to convene an IEP meeting and shall provide written notice to the parent explaining why the LEA has concluded a meeting is not necessary to ensure the provision of FAPE to the child.

(3) The LEA's notice shall inform the parent of his or her right to initiate a due process hearing if the parent disagrees with the LEA's decision not to convene a meeting under this subsection.

2363.6 Notice of IEP Meeting (34 CFR §300.322(b))

(a) A notice of an IEP meeting shall:

(1) Indicate the purpose, time, and location of the meeting;

(2) State who will be in attendance; and

(3) Inform the parents of the right of the LEA and the parents to invite other people who, in their opinion, have knowledge or special expertise about the child.

(b) Beginning not later than the first IEP to be in effect when the youth is age 16, or younger if appropriate, for a youth with a disability the notice shall advise the parents and youth of the requirements of Rule 2363.4(b).

2363.7 Development, Review, and Revision of IEP (34 CFR §300.324)

(a) In the development, review, and revision of an IEP, the IEP team shall consider:

(1) The strengths of the child and the concerns of the parent for enhancing the education of their child;

(2) The results of the initial or most recent evaluation of the child;

(3) As appropriate, the results of the child's performance on any general State or district-wide assessment programs; and

(4) The academic, developmental, and functional needs of the child

(b) The IEP team shall also consider the following special factors:

(1) In the case of a child with limited English proficiency, the language needs of the child as those needs relate to the child's IEP;

(2) In the case of a child who is blind or visually impaired, provision for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;

(3) The communication needs of the child, and in the case of a child who is deaf or hard of hearing, the child's language and communication needs, opportunities for direct communication with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode;

(4) Whether the child requires assistive technology devices and services.

(5) When the evaluation data indicates that the child’s behavior is impeding his or her learning or the learning of others, positive behavioral interventions and supports, and other strategies to address the behavior and to assist the child to develop skills in areas such as:

(i) Social skills;

(ii) Anger management; and/or

(iii) Conflict resolution.

(6) Supplementary aids and services, program modifications or supports for the child or school personnel who will be working with the child to help him/her:

(i) Attain IEP annual goals;

(ii) Progress in the general curriculum;

(iii) Participate in extra-curricular activities; and

(iv) Be educated in the least restrictive environment.

(7) Whether a child needs a particular device or service, including an intervention, accommodation, or other program modification, in order for the child to receive a FAPE.

(c) Each LEA shall ensure that the IEP team:

(1) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and

(2) Revises the IEP as appropriate to address:

(i) A lack of expected progress toward the annual goals;

(ii) A lack of expected progress in the general curriculum, if appropriate;

(iii) The results of any re-evaluation;

(iv) Information about the child provided to, or by, the parents;

(v) The child's anticipated needs; or

(vi) Other matters.

(3) In making changes to the IEP, after the annual review meeting, the parent of the child and the school may agree, in writing, not to convene an IEP meeting for the purpose of making such changes and, instead, may develop a written document to amend or modify the child's current IEP.

(i) Parents shall be given a copy of the written agreement document.

(d) To the extent possible, schools shall encourage the consolidation of re-evaluation meetings and other IEP meetings for the child.

2363.8 Content of IEP (34 CFR §300.320)

An IEP that contains information under one component need not repeat the same information under another component. The IEP for each child with a disability shall include:

(a) A statement of the child's present levels of academic achievement and functional performance, including:

(1) The child's abilities, acquired skills, and strengths;

(2) How the child's disability affects the child's involvement and ability to make progress in the general curriculum; or

(3) For preschool children, how the disability affects the child's participation in activities appropriate for the child;

(4) For youth, not later than one year before the youth reaches the age 18, a statement that the youth has been informed of their rights under these regulations that will transfer to them upon reaching the age of majority (18)

(b) Measurable annual goals related to the child's present levels of academic and functional performance which shall:

(1) Be written as measurable short-term objectives or benchmarks with projected dates for accomplishment, including a description of the evaluation procedures to be used to measure the child's progress towards meeting the short-term objectives or benchmarks;

(2) Enable the child to be involved in and progress, to the extent appropriate, in the same curriculum as children without disabilities. For preschool children, goals shall include participation in activities appropriate for children without disabilities;

(3) Enable the child to meet other educational needs that result from his or her disability;

(4) Be accompanied by a method of reporting the child's progress to the parents at least as often as other parents in the school receive progress reports. A progress report shall inform parents of:

(i) Their child's progress toward the annual goals; and

(ii) The extent to which the progress is sufficient to enable the child to achieve the goals by the end of the year.

(c) Special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of individual accommodations, program modifications, or supports that will be provided for school personnel to enable the child:

(1) To advance appropriately toward attaining his or her IEP annual goals;

(2) To be involved in and progress in the general curriculum, to participate in extra-curricular and other non-academic activities and in physical education services pursuant to the requirements in Rule 2360.2(f).

(3) To be educated and participate with a variety of children who do and do not have disabilities.

(d) The projected date for the beginning of the services and modifications, the title of the service provider, anticipated frequency, location, and duration of those services and modifications;

(e) The IEP Team shall determine the child's placement in accordance with Rule 2364.3. The IEP shall also include an explanation of the extent, if any, to which the

child will not participate with children without disabilities in a general education class, general curriculum, extracurricular and other non-academic activities;

(f) Where the child's placement is a residential placement pursuant to Rule 2366.9, the child's IEP shall contain annual goals and short-term objectives or benchmarks designed to reintegrate the child into a local LEA placement, and a description of how they will lead to reintegration.

(g)A statement of any individual accommodations in the administration of State, district-wide, or local assessments of student achievement that are needed in order for the child to participate in the assessment;

(1) If the IEP team determines that the child will not participate in a particular State or district-wide assessment of student achievement (or part of an assessment), a statement of:

(i) Why that assessment is not appropriate for the child; and

(ii) How the child will be assessed.

(h)A description of any extended school year services (ESY) which the IEP team finds are necessary to provide a FAPE to the child.

(1) ESY services shall be provided only if a child's IEP team determines that the services are necessary for the provision of FAPE to the child because one or more of the following factors is evident:

(i) ESY is essential to permit the child an opportunity to reach reasonably set educational goals;

(ii) There has been a significant amount of regression over the past winter, spring and summer vacations and recoupment did not occur within a reasonable amount of time;

(iii) The severity of the child’s disability presents a danger of substantial regression; or

(iv) The youth’s transition goals require continued programming beyond the school year IEP.

(2) A LEA or IEP team may not limit extended school year services to children with particular disabilities.

(3) A LEA shall not adopt a policy that limits the type, amount, or duration of ESY services for all children.

(i) Transition services

(1) For youth, beginning with the first IEP in effect when the youth is 16, or younger if determined appropriate by the IEP team, and updated annually thereafter, there shall be:

(i) Age appropriate and measurable postsecondary goals based upon age appropriate assessments related to:

(A) Education/training;

(B) Employment; and

(C) If appropriate, independent living;

(ii) Evidence that the youth's interests and preferences were taken into consideration during the formulation of the goals; and

(iii) Transition services, including courses of study, needed to assist the youth in reaching those goals.

(2) Contingent upon prior consent from the parent or adult student, representatives of any agency that is likely to be responsible for providing or paying for transition services to implement the goals, shall be invited to participate in the IEP meeting.

(3) If a participating agency, other than the LEA, fails to provide the transition services described in the IEP, the LEA shall reconvene the IEP team to identify alternative strategies to meet the transition objectives for the youth set out in the IEP.

(4) Nothing in these regulations shall relieve any participating agency of the responsibility to provide or pay for any transition service that the agency would otherwise provide to youth with disabilities who meet the eligibility criteria of that agency.

(5) When a youth is going to graduate, a "summary of performance" report shall be written for the youth as described at Rule 2362.2.3(g).

2363.9 Consent to Initial Provision of Special Education Services (34 CFR §300.300(b))

(a) A consent form shall be signed by the parent and received by the LEA prior to the initial provision of IEP services.

(b) If the parent of a child fails to respond or refuses to consent to services the LEA may not use due process procedures or mediation in order to obtain agreement or a ruling that the services may be provided to the child.

(c) If the parent of the child refuses to consent to the initial provision of special education or related services, or the parent fails to respond to a request to provide consent for the initial provision of special education and related services, the LEA:

(1) Will not be considered to be in violation of the requirement to make available a free, appropriate public education to the child for the failure to provide the child with the special education and related services for which the LEA requests consent.

(2) Is not required to convene an IEP meeting or develop an IEP for the child for the special education and related services for which the LEA requests such consent.

(d) If the parent provides written consent for the initial provision of IEP services before they have begun and then revokes the consent, the services shall not

commence. The child shall remain eligible for services and the LEA may attempt to resolve the matter with the parent by:

(1) Discussing the matter through appropriate informal means,

(2) Requesting mediation, or

(3) Requesting that the child be re-evaluated to determine if he or she continues to be eligible for special education services. A re-evaluation could consist of a review of existing data.

(e) A parent may revoke consent at any time subsequent to the initial provision of special education and related services. The revocation of consent shall be in writing, on a form provided by the LEA or in any other written form, and should indicate the date of revocation. Upon receipt of such a revocation of consent, the LEA:

(1) Shall provide prior written notice to the parent that it is ceasing the provision of special education and related services and then may not continue to provide special education and related services;

(2) May not use due process procedures or mediation in order to obtain agreement or a ruling that the services may be provided to the child;

(3) Will not be considered to be in violation of the requirement to make available a free, appropriate public education to the child for the failure to provide the child with the special education and related services for which the LEA requests consent; and

(4) Is not required to convene an IEP Team meeting or develop an IEP for the child after the date of the revocation of consent.

Revocation of consent is not retroactive and the LEA is not required to amend the child's education records to remove any references to the child's prior receipt of special education services.

2363.10 Distribution and Explanation of the IEP Document (34 CFR 300.323(d))

(a) The child's IEP shall be made accessible to each general education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation; and

(b) Each teacher and provider described above shall be informed of:

(1) His or her specific responsibilities related to implementing the child's IEP; and

(2) The specific accommodations, modifications, and supports that shall be provided for the child in accordance with the IEP.

(c) The LEA shall give the parent a copy of the child's IEP, or amended portions of the IEP, at no cost to the parent.

2363.11 IEP Requirements for Placements by LEAs in Independent Schools or Tutorial Programs (34 CFR §300.325)

(a) Before a LEA places a child t eligible for special education services in, or refers a child to, an independent school, or a tutorial program, the LEA shall initiate and conduct a meeting to develop an IEP for the child that reflects the change in placement.

(b) The LEA's placement shall be at no cost to the parents and the independent school or tutorial program shall provide an education that meets the standards that apply to education provided by the local LEA.

(1) Placements by LEAs in independent schools shall be in schools that have been approved according to Rule 2228.

(2) Placements by LEAs in tutorial programs shall be in programs that have been approved according to Rule 2230.

(c) The LEA shall ensure that a representative of the independent school or tutorial program either attends the meeting or is able to participate by other methods including individual or conference telephone calls.

(d)After a child with a disability enters an independent school or a tutorial program, any meetings to review and revise the child's IEP may be initiated and conducted by the school or tutorial program in accordance with the written agreement as entered into in conformance with Rule 2228.4.2. If the independent school or tutorial program initiates and conducts these meetings, the LEA shall ensure, to the extent required by Rule 2363.5, that a LEA Representative is involved in any decision about the child's IEP and agrees to any proposed changes in the IEP before those changes are implemented. Parent participation shall be required and documented as set forth in Rule 2363.5.

(e) When an independent school or a tutorial program implements a child's IEP, responsibility for compliance with the special education regulations with respect to that child remains with the LEA.

(f) A child placed in an independent school or a tutorial program by a LEA shall retain all of the rights of a child on an IEP who is attending a public school.

2363.12 IEP For A Child Moving Into The LEA When The Child Has Been Eligible Or Was Being Evaluated For Special Education In Another State Or In Another Vermont LEA (34 CFR §300.323(e) and (f))

(a) Child Moving From Another Vermont LEA — If a child eligible for special education services moves from one Vermont LEA to another, the receiving LEA shall either adopt the IEP the former LEA developed for the child or develop a new IEP for the child. The receiving LEA shall implement the current IEP to the extent possible until a new IEP is developed. In the absence of exceptional circumstances, IEP services shall commence within one week of the time the child enrolls in the receiving LEA.

(b) Child Moving From an Out-Of-State LEA — If a child eligible for special education services in another state moves into a Vermont LEA within the same school year, the receiving LEA, in consultation with the parent, shall provide a FAPE to that child, including services comparable to those described in the child's IEP from the previous school, until the Vermont LEA:

(1) Conducts an evaluation to determine initial eligibility in Vermont; and

(2) If eligible, develops, adopts, and implements a new IEP.

(c) Child Moving During an Evaluation Process – If a child transfers to another LEA within the state or moves into a Vermont school from out of state, the completion of the evaluation shall be coordinated and completed by the new school, including documentation with the parents of the child of the expected completion date of the evaluation should it differ from the original expected date of completion. This evaluation should be completed as expeditiously as possible.

(d) To facilitate the transition of a child described in (a) and (b) of this rule the previous LEA and the child's new LEA shall take reasonable steps to promptly send and receive, in accordance with the provisions of FERPA, the child's records, including the IEP, supporting documents and any other records relating to the child's special education and related services. This rule may not be interpreted to limit either the previous LEA or the new LEA's responsibilities pursuant to Rule 2365.2.13(a).

2363.13 IEP Accountability

(a) Each LEA shall:

(1) Provide special education and related services to an eligible child in accordance with the child's IEP; and

(2) Make a good faith effort to assist the child to achieve the goals and objectives or benchmarks listed in the IEP.

(b) These rules do not require that a LEA, teacher, or other person be held accountable if a child does not achieve the growth projected in the annual goals and benchmarks or objectives. However, these rules do not prohibit a LEA from establishing its own accountability systems.

(c) Nothing in this section limits a parent's right to ask for revisions of the child's IEP or to invoke due process procedures if the parent feels that the efforts required in paragraph (a) of this section are not being made.

2364 Least Restrictive Environment (LRE)

2364.1 General LRE Requirements (34 CFR § 300.114)

(a) Each LEA shall ensure that:

(1) A child eligible for special education services shall be educated with his or her non-disabled chronological age peers, to the maximum extent appropriate in the school he or she would attend if he or she did not have a disability; and

(2) Special classes, separate schooling or other removal of children with disabilities from the general educational environment shall occur only if the nature or severity of the child's disability is such that education in general classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(b) Pursuant to 16 V.S.A § 2959b, the IEP team may consider the cost of the provision of special education or related services to the child if:

(1) The IEP has been developed with the parents in accordance with Rules 2363 - 2363.9;

(2) The IEP team has determined that the child's placement contained in the IEP is appropriate for the child,

(3) Each of the options under consideration by the IEP team for fulfilling the requirements of the child's IEP would constitute a free appropriate public education in the least restrictive environment for the child, and

(4) The funding mechanism for the special education service was not used to deny a free appropriate public education to the child.

2364.2 Continuum of Alternative Placements (34 CFR § 300.115)

(a) Each LEA shall ensure that a continuum of alternative placements is available to meet the needs of children who are receiving IEP services.

(b) The continuum shall include:

(1) Instruction in general education classes, special classes, special schools, independent schools, home instruction and instruction in hospitals, and residential facilities; and

(2) Provisions for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with general education class placements.

2364.3 Placements (34 CFR § 300.116)

(a) The IEP team shall determine the educational placement for the child given the following:

(1) Educational placement refers to the provision of special education and related services rather than a specific site;

(2) If consensus cannot be reached, the LEA determines the specific site of the educational placement, such as the specific classroom or specific school.

(b) Placement decisions shall be made on the basis of the child's individual circumstances and not on the basis of the child's disability category.

(c) Unless the IEP of a child with a disability requires some other arrangement, the child shall be educated in the school that he or she would attend if nondisabled.

(d) Barriers to the participation of children with disabilities in the general education environment shall be addressed whenever possible by the provision of accommodations, modifications, and supplementary aids and services rather than by placement in separate programs.

(e) A child with a disability shall not be removed from education in age-appropriate general classrooms solely because of needed modifications in the general curriculum.

(f) In selecting the LRE, consideration shall be given to any potential harmful effect on the child or on the quality of services that he or she needs.

(g) The placement decided upon shall be:

(1) Determined at least annually;

(2) Consistent with the other provisions of the child's IEP; and

(3) As close as possible to the child's home, unless the parent agrees otherwise.

2364.4 LRE for Non-Academic and Extra-curricular Activities (34 CFR § 300.117)

(a) In providing or arranging for the provision of non-academic (examples: meals and recess periods) and extra-curricular services and activities as set forth in Rule 2360.2(i), the LEA shall ensure that an eligible child participates with non-disabled children in those services and activities to the maximum extent appropriate to the needs of that child.

(b) The LEA shall ensure that each child with a disability has the supplementary aids and services determined by the child's IEP team to be appropriate and necessary for the child to participate in non-academic and extra-curricular activities.

2364.5 Technical Assistance, Training and Monitoring Activities for LRE (34 CFR § 300.119-120)

(a) The Vermont Department of Education shall:

(1) Provide training and technical assistance to teachers and administrators in public and independent schools approved for the provision of special education services to assist them in implementing the LRE requirements in Rule 2364.

(2) Monitor a LEA's compliance with LRE requirements in Rule 2364. If there is evidence that a LEA makes placements that are inconsistent with LRE requirements, the Department shall—

(i) Review the LEA's justification for its actions;

(ii) Assist in planning and implementing any necessary corrective action; and

(iii) Apply as necessary the enforcement policy and procedures contained in the Vermont State Board of Education policy on "Denial of Federal Special Education Funds to A LEA."

2364.6 Instruction for Homebound or Hospitalized Special Education Children

(a) Children who are eligible for essential early education services who are homebound or hospitalized due to a medical condition and are unable to access the services outlined in their current IEP shall receive direct instruction as determined by the child's IEP team unless inconsistent with medical recommendations.

(b) Homebound or hospitalized elementary special education children and elementary special education children whose IEPs call for tutorial services outside school shall receive instruction sufficient to provide a FAPE pursuant to their IEPs, for no less than six hours per week unless inconsistent with medical recommendations.

(c) Homebound or hospitalized secondary special education youth and secondary special education youth whose IEPs call for tutorial services outside school, shall receive instruction sufficient to provide a FAPE pursuant to their IEPs for no less than an average of two hours per subject per week unless inconsistent with medical recommendations.

2365 Parental Rights and Confidentiality of Information

2365.1 Parental Rights

2365.1.1 Prior Written Notice (34 CFR §300.503)

The LEA shall provide written notice to the parent or guardian of a child within a reasonable time before it proposes to initiate or change, or refuses to initiate or change a child's identification, evaluation, educational placement or the provision of a free appropriate public education. This written notice shall contain:

(a) A description of the action proposed or refused by the agency;

(b) An explanation of why the LEA proposes or refuses to take the action;

(c) A description of other options the IEP team considered and reasons these options were rejected;

(d) A description of evaluation procedures, tests, records, or reports upon which the action is based;

(e) A description of other factors that are relevant to the proposed or refused action;

(f) A statement that the parents of special education children have procedural protections as set forth in the Parental Rights in Special Education Notice developed by the Department and, if this notice is not pertaining to an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;

(g) Sources for parents to contact to obtain assistance in understanding the provisions of their parental rights in special education; and

(h) The prior written notice shall be—

(1) Written in language understandable to the general public; and

(2) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(3) If the native language or other mode of communication of the parent is not a written language, the LEA shall take steps to ensure--

(i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

(ii) That the parent understands the content of the notice; and

(iii) That there is written evidence that the requirements in paragraphs (i) and (ii) of this section have been met.

(4) Available to the parent by electronic mail, if the LEA makes that option available and the parent elects to receive notices through this mode of communication.

2365.1.2 Procedural Safeguards Notice (34 CFR §300.504)

(a) A copy of the Parental Rights in Special Education Notice is required to be given to parents only one time per year, except that a copy shall also be given to parents upon:

(1) Initial referral or parent request for an evaluation;

(2) Receipt of the first administrative complaint under Rule 2365.1.5 or a request for mediation under Rule 2365.1.4(d) or a due process complaint under Rule 2365.1.6 in that school year;

(3) Request by a parent; and

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

(b) The Parental Rights notice includes a full explanation of all of the procedural safeguards available to the parent as they relate to:

(1) Independent educational evaluation;

(2) Prior written notice;

(3) Parental consent;

(4) Access to educational records;

(5) The opportunity to present and resolve complaints through the due process complaint and administrative complaint procedures, including--

(i) The time period in which to file a complaint;

(ii) The opportunity for the agency to resolve the complaint; and

(iii) The difference between the due process complaint and the State administrative complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures;

(6) The child's placement during pendency of due process complaint proceedings;

(7) Procedures for children who are subject to placement in an interim alternative educational setting;

(8) Requirements for unilateral placement by parents of children in private independent schools at public expense;

(9) The availability of mediation;

(10) Due process hearings, including requirements for disclosure of evaluation results and recommendations;

(11) Civil actions including the time period in which to file those actions; and

(12) Attorneys' fees.

(c) The Parental Rights notice shall be:

(1) Written in language understandable to the general public;

(2) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. If the native language or other mode of communication of the parent is not a written language, the LEA shall take steps to ensure:

(i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

(ii) That the parent understands the content of the notice; and

(iii) That there is written evidence that (i) and (ii) above have been met.

2365.1.3 Parental Consent

(a) Informed parental consent shall be required:

(1) Before conducting an initial evaluation or re-evaluation which consists of more than a review of existing data pursuant to Rule 2362.2.3(b)(1)(i);

(2) Before the initial provision of special education and related services pursuant to Rule 2363.9. Consent for initial evaluation may not be construed as consent for initial provision of special education services.

(b) Consent, where given,

(1) Shall be after the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication.

(2) Shall be in writing and shall indicate that it is given voluntarily with the knowledge that it may be revoked at any time, with the understanding that the revocation is not retroactive;

(c) Parental consent is not required:

(1) Before reviewing existing data as part of an evaluation or a re-evaluation;

(2) Before administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children; or

(3) Before a re-evaluation, if the LEA can demonstrate that it has taken reasonable measures to obtain consent and the parent failed to respond.

(d) If the parents of a child refuse consent for an initial evaluation or a re-evaluation which includes the gathering of new information:

(1) The LEA may continue to pursue these evaluations by seeking mediation, using due process, or reviewing existing data.

(2) The LEA may decide not to pursue the evaluation and shall document its justification for doing so in the child's record.

(3) If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation under paragraph (a)(1) of this section, or the parent fails to respond to a request to provide consent, the LEA may pursue the initial evaluation of the child by utilizing mediation or due process. The public school shall not have violated its obligation to locate, identify, and evaluate children suspected of being children with disabilities if it declines to pursue an evaluation to which a parent has failed to consent.

(e) Except as otherwise provided in these regulations, a LEA may not use a parent's refusal to consent to an initial evaluation to deny the parent or child any LEA service, benefit, or activity outside of special education.

2365.1.4 Mediation

(a) A mediation process administered by the Commissioner shall be available to parents of children with disabilities, LEAs and other public agencies with a special education dispute, including matters arising prior to the filing of a due process complaint.

(b)The mediation process shall be voluntary on the part of the parties and shall not be used to deny or delay a parent's right to file a due process complaint or right to a due process hearing or any other rights. Mediation may be terminated at any time by any of the parties or by the mediator.

(c)The Commissioner shall provide the services of mediators at no cost to the parties.

(d)Written requests for mediation shall be submitted to the Vermont Department of Education, Special Education Mediation Service (VDE-SEMS), 120 State Street, Montpelier, Vermont 05620-2501. Upon receipt of such request, the Department shall send each parent who requests mediation the Parents' Rights in Special Education Notice and shall send its mediation procedures to all parties to the mediation. The agreement to mediate shall be in writing on a form approved by the Commissioner and signed by all parties. If the request cannot be in writing due to

special circumstances, such as an inability to communicate in writing, the request may be made through other means of communication.

(e) The Department of Education shall maintain a list of qualified and impartial mediators who are trained in effective mediation techniques.

(f) Mediators shall:

(1) Be knowledgeable in law and regulations relating to the provision of special education and related services.

(2) Not be employees of the Department, a LEA or any other public agency that is involved in the education or care of the child and shall not have any personal or professional conflicts of interest.

(3) Be assigned to a case by the Commissioner on a random, rotational, or other impartial basis from the list.

(4) Be assigned to a case by the Department no later than five days from receipt of a joint written request for mediation or upon receipt of one party's written request and telephone or other confirmation by the other party or parties.

(g) Each party to mediation shall ensure that a person in attendance has decision-making authority for the party.

(h) Parents may be accompanied and advised at the mediation by an attorney, an advocate, a support person, and/or family members, however, they may not be represented by a non-attorney. If the parents plan to be represented by an attorney at mediation, they shall notify the LEA prior to the mediation. LEAs may be represented by an attorney at mediation only when the parents are represented by an attorney at mediation.

(i) Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties. If the mediation was initiated subsequent to the initiation of a due process of the same matter, but not after the resolution period in Rule 2365.1.6.8(b) has lapsed, the due process timeline of Rule 2365.1.6 shall commence following the end of the resolution period.

(j) The parties to mediation shall be required to sign an Agreement to Mediate including a confidentiality clause prior to the commencement of the mediation to ensure that all discussions that occur during mediation remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding, except pursuant to subsection (k)(1) of this section.

(k) If the parties resolve a dispute through the mediation process, the parties shall execute a legally binding agreement that sets forth that resolution and that:

(1) States that all discussions that occurred during the mediation process will remain confidential; the mediator shall not be called as a witness in any future due process proceeding to testify regarding any information gained during the course of mediation. Any statements made at the mediation shall not be used as evidence in any subsequent due process hearing or civil proceeding arising from that dispute; however, signed mediation agreements may be released for the

purpose of enforcement thereof in a due process proceeding or court of competent jurisdiction; and

(2) Is signed by the parent, a representative of each other party who has the authority to bind such party and the mediator. The mediation agreement shall be confidential unless otherwise agreed upon; however, a copy shall be provided to the Vermont Department of Education.

(3) Is enforceable in a due process proceeding, any state court of competent jurisdiction or in a district court of the United States.

(l) The mediation agreement shall become a part of the child's educational record or the parties shall, at minimum, reference relevant provisions of the mediation agreement in the child's IEP.

2365.1.5 Administrative Complaints

(a) Any person or organization alleging that a LEA or public agency has violated a requirement of Part B of the IDEA or implementing federal or state special education regulations, may file a signed written complaint with the Commissioner of Education.

(b) The complaint may be filed utilizing the available state form, or other form, and shall include--

(1) A statement that a public agency has violated a requirement of Part B of the IDEA;

(2) The facts on which the statement is based;

(3) The signature and contact information for the complainant; and

(4) If alleging violations against a specific child--

(i) The name, age and address of the residence of the child;

(ii) The name of the school the child is attending;

(iii) 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;

(iv) A description of the nature of the problem of the child, including facts relating to the problem; and

(v) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

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

(d) The party filing the complaint shall forward a copy of the complaint to the LEA or public agency serving the child at the same time the party files the complaint with the Commissioner of Education.

(e) The Commissioner will not accept a complaint that fails to comply with (b) through (d).

(f) Upon receipt of a complaint, the Commissioner shall inform the complainant and the LEA of the option to use mediation. The Commissioner shall appoint a complaint investigator to conduct an investigation.

(1) The complaint investigator shall examine evidence presented on behalf of the complainant and on behalf of the LEA.

(2) 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. The complaint investigator will give the LEA the opportunity to respond to the complaint and at the LEA's discretion, the opportunity to respond with a proposal to resolve the complaint. Once the Commissioner notifies the complainant that s/he has received the complaint, the investigator will give the complainant 15 days to submit additional information either orally, or in writing about the allegations in the complaint.

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

(i) Conduct pre-hearing conferences;

(ii) Conduct any hearings that may be required;

(iii) Prepare proposed findings of facts and conclusions of law for a decision by the Commissioner; and

(iv) Any other powers and duties set forth in State Board of Education Rule 1236.1.

(4) No later than sixty days after receipt of the complaint, the Commissioner shall issue a written decision regarding each allegation opened by the complaint investigator. This time limit may be extended only if exceptional circumstances exist with respect to a particular complaint or if the complainant and the LEA agree to extend the time to engage in mediation.

(g) If the Commissioner determines that the LEA has violated a requirement of Part B of the IDEA or implementing federal or state special education regulations, the investigation report shall address how to remediate the violation as well as any resulting denial of those services, including, as appropriate, requiring the evaluation planning team or IEP team to reconvene to reconsider an evaluation determination or offer of special education and related services, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child, as well as appropriate future provision of services for all children with disabilities.

(h) Administrative Complaints filed under this rule and due process hearings filed under Rule 2365.1.6 are subject to the following:

(1) If a written complaint is received that is also the subject of a due process hearing or subsequent appeal, or contains multiple issues, of which one or more

are part of that hearing, the Commissioner shall set aside any part of the complaint that is being addressed in the due process hearing or appeal until the conclusion of the hearing or appeal. However, any issue in the complaint that is not a part of the due process action shall be resolved using the time limit and procedures described above.

(2) If the subject of an administrative complaint filed under this rule has previously been decided in a due process hearing involving the same parties:

(i) The due process hearing decision is binding; and

(ii) The Commissioner shall inform the complainant to that effect.

(3) If a parent, who prevailed at a due process hearing, files an administrative complaint alleging that a LEA failed to implement the hearing officer's decision, the Commissioner shall resolve the complaint.

(i) The Commissioner's written decision in subsection (f)(4) is not subject to appeal. Nothing herein shall be interpreted to preclude a parent or a LEA from filing a due process complaint on any matters regarding the identification, evaluation, or placement of the child or the provision of a FAPE pursuant to Rule 2365.1.6.2. If a parent or LEA files a due process complaint pursuant to Rule 2365.1.6.2 and the matter was previously the subject of an administrative complaint, the hearing officer will hear the case de novo (anew).

(j) A complaint may also be filed regarding provision of Part C of the IDEA. Investigation of a Part C complaint shall be completed in coordination with the Agency of Human Services, Department of Health, Child Development Division. A written complaint should be sent to the Part C Coordinator of Children's Integrated Services/Early Intervention at 103 S. Main Street, Waterbury, Vermont 05671-0204.

2365.1.6 Due Process Complaint Procedures

2365.1.6.1 Timeliness of Due Process Complaint Request

(a) A written due process complaint notice shall be filed with the Commissioner:

(1) Within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the due process complaint.

(2) Notwithstanding (1) above, within 90 days of a unilateral special education placement by the child's parent, where the request is for reimbursement of the costs of such placement.

(3) Exceptions to the timeline. The timelines described in (i) and (ii) of this section do not apply to a parent if the parent was prevented from filing a due process complaint due to:

(i) Specific misrepresentations by the LEA that it had resolved the problem forming the basis of the due process complaint; or

(ii) The LEA's withholding of information from the parent that was required under this part to be provided to the parent.

(4) Where the parent has not been given proper notice of special education rights under state and federal law, including notice of the limitations in this section, such limitations shall run from the time notice of those rights is properly given.

(5) With same day notification to the LEA pursuant to rule 2365.1.6.3.

2365.1.6.2 Initiation of Due Process Hearing by a Parent, LEA, or the Commissioner

(a) The Commissioner shall make available a model form for a parent or LEA to use to initiate a due process complaint. However, the Commissioner may not require the use of this model form. If the parent or LEA uses a document other than the model form, that document shall meet the content requirements for filing a due process complaint in subsection (c).

(b) A parent or LEA may file a due process complaint on any matters regarding the identification, evaluation, or placement of the child or the provision of a free appropriate public education by sending a written Due Process Complaint Notice to the Commissioner with a copy sent to the other party. If the notice cannot be in writing due to special circumstances, such as an inability to communicate in writing, the notice may be made through other means of communication.

(c) The party requesting a hearing shall submit the written due process complaint to the Commissioner and to all other parties, which shall contain the following information:

(1) The name and age of the child;

(2) The address of the residence of the child; 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;

(3) The name of the school the child is attending;

(4) A description of the nature of the problem relating to the proposed, or refused initiation or change of the child's identification, evaluation, and/or educational placement, and the facts relating to the problem; and

(5) A proposed resolution of the problem to the extent known and available to the complainant at the time.

(d) A party may not have a hearing on a due process complaint or engage in a resolution session until the party, or the attorney representing the party, files a due process complaint that meets the requirements of paragraph (c) of this section.

(e) The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the complaint filed, unless the other parties agree otherwise.

(f) The Commissioner may request a due process hearing in accordance with 16 V.S.A. §2958(c)(1) to challenge the need for residential placement where the

residential placement review team recommends that a less restrictive educational placement is both available and appropriate for a child who is eligible for special education services.

(g) If a parent requests the information or if a due process complaint notice is received, the Commissioner shall inform the parent of any free or low-cost legal and other relevant services available in the area.

2365.1.6.3 Notification by Commissioner to LEA of Receipt of Request for Hearing

If the due process complaint is initiated by a parent, the Commissioner shall within 24 hours notify the LEA by facsimile transmission, telephone or electronic mail, confirmed in writing by first class mail. Notification to the LEA by the Department shall be made specifically to the special education administrator, if the LEA has a special education administrator on staff. If the LEA does not have a special education administrator on staff, notification to the LEA shall be made to the superintendent.

2365.1.6.4 Commencement of the Due Process Complaint; Elements of Complaint Process

(a) The hearing process shall commence on the date the Commissioner receives a request for a hearing. If received outside of regular business hours, the process shall commence on the next business day.

(b) A due process hearing shall include the following:

(1) An initial telephone conference call pursuant to Rule 2365.1.6.7(a)(2) and (b).

(2) A prehearing conference as in Rule 2365.1.6.11 for the due process hearing that results in a hearing officer's prehearing order.

(3) A hearing that, except for good cause shown, shall be limited to two business days. The hearing officer will grant additional time only if necessary for a full, fair disclosure of the facts necessary to arrive at a conclusion.

(4) A hearing officer's decision pursuant to Rule 2365.1.6.16 that shall be the final decision of the Department of Education.

2365.1.6.5 Sufficiency of Complaint

(a) The due process complaint shall be deemed sufficient unless an opposing party receiving the due process complaint notifies the hearing officer and the complaining party in writing, within 15 days of receipt of the due process complaint, that the opposing party believes that the due process complaint does not meet the requirements in Rule 2365.1.6.2(c). Filing of such a notification by an opposing party shall not be grounds to delay the resolution session required under Rule 2365.1.6.8.

(b) Within five days of receipt of notification under paragraph (a) of this section, the hearing officer shall make a determination on the face of the due process complaint of whether the due process complaint meets the requirements of Rule 2365.1.6.2(b),

and shall immediately notify the parties in writing of that determination and the status of the due process complaint. If the hearing officer determines that the due process is insufficient, he or she shall identify how the complaint is insufficient.

(c) A party may amend its due process complaint only if:

(1) The other parties consent in writing to the amendment and are given the opportunity to resolve the amended due process complaint through a resolution meeting held pursuant to Rule 2365.1.6.8; or

(2) The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins.

(d) If a party files an amended due process complaint, the timelines for the resolution session and the resolution period begin again with the filing of the amended due process complaint.

2365.1.6.6 Response to Issues Raised in Complaint

(a) LEA response

(1) If the LEA has not sent a prior written notice under Rule 2365.1.1 to the parent regarding the subject matter contained in the parent's due process complaint, the LEA shall, within 10 days of receiving the due process complaint, send to the parent a response that includes:

(i) An explanation of why the agency proposed or refused to take the action raised in the due process complaint;

(ii) A description of other options that the IEP team considered and the reasons why those options were rejected;

(iii) A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and

(iv) A description of other factors that are relevant to the agency's proposed or refused action.

(2) A response by the LEA under (a)(1) of this section shall not be construed to preclude the LEA from asserting that the parent's due process complaint was insufficient.

(b)Party other than LEA response. Except as provided in paragraph (a) of this section, the party receiving a due process complaint shall, within 10 days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.

2365.1.6.7 Scheduling of Resolution Session, Mediation, Prehearing Conference, and Due Process Hearing

(a) Within three business days of receipt of the complaint, the Commissioner shall schedule and notify the parties in writing of the following:

(1) The appointed hearing officer to preside at the due process hearing;

(2) The time and date of an initial telephone conference call with the hearing officer to be held with the parties or their attorneys no later than five business days from receipt of the complaint;

(3) The legal authority under which the hearing is held;

(4) A copy of the request for due process hearing;

(5) The right to have an attorney present to represent each party at the party's expense with the exception of Rule 2365.1.6.8(a)(1)(iii); and

(6) Information for the parent regarding any free or low-cost legal and other relevant services available in the area.

(b)In the initial telephone conference call, the hearing officer will establish and issue a due process scheduling order detailing the following:

(1) Whether the parties have agreed to waive in writing the resolution session and if they intend to attempt mediation.

(2) If the resolution session is not waived, a date and time for the resolution session.

(3) If the resolution session is waived and mediation accepted, the hearing officer will notify the Department of a date by which mediation shall occur, and the Department will assign a mediator.

(4) If the resolution session is waived and mediation rejected, the hearing process will commence consistent with the timelines in Rule 2365.1.6.8.

(5) The dates for the prehearing conference, 5-day rule disclosure, due process hearing, and final decision using the timelines in Rules 2365.1.6.7, 2365.1.6.9, and 2365.1.6.16.

(6) If both parties agree, the hearing officer may also address any concerns about the sufficiency of the complaint.

(7) The hearing officer may also address any modifications to Rule 2365.1.6 necessary to address special circumstances, such as a party's inability to communicate in writing or disability.

(8) The scheduling shall allow for the following:

(i) A date for a resolution session or a date by which mediation shall occur, if the parties so decide;

(ii) A half business day for a prehearing conference; and

(iii) Two business days for a hearing, except for good cause shown pursuant to Rule 2365.1.6.4(b)(3) and Rules 2365.1.6.15(e).

2365.1.6.8 Resolution Session

(a) Convening a Resolution Session

(1) The LEA shall convene a resolution session on the date scheduled by the hearing officer at the initial conference, if the parties have not been able to agree

on a mutually convenient time and date. The resolution session shall be held no later than 15 days after receiving notice of the due process complaint. The session will include the parents and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint, and:

(i) Shall include a representative of the LEA who has decision-making authority on behalf of the LEA;

(ii) The LEA and the parents determine the relevant members of the IEP team to attend the session; and

(iii) May not include an attorney of the LEA unless the parent is accompanied by an attorney.

(2) The purpose of the session is for the party filing the complaint to discuss their due process complaint, and the facts that form the basis of the due process complaint, so that the other part(ies) have the opportunity to resolve the dispute that is the basis for the due process complaint.

(3) The parties may agree in writing that discussions that occur during the resolution session are confidential and may not be used as evidence in any subsequent due process hearing or civil proceedings arising from that dispute.

(4) The session described in paragraph (a)(1) and (2) of this section need not be held if:

(i) The parents and the LEA agree in writing to waive the session and so notify the hearing officer; or

(ii) The parents and the LEA agree to use the mediation process described in Rule 2365.1.4 and so notify the hearing officer.

(b) Resolution Period

(1) If the LEA has not resolved the due process complaint to the satisfaction of the parents within 30 days of the receipt of the due process complaint, the due process hearing may occur, and all of the applicable timelines for a due process hearing shall commence.

(2) The timeline for issuing a final decision under Rule 2365.1.16 begins at the expiration of this 30 day period.

(3) If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented by making a record of its attempts to arrange a mutually agreed upon time and place), the LEA may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint.

(4) If the LEA fails to hold the resolution session within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of the hearing officer to begin the due process hearing timeline.

(5) Adjustments to the 30-day resolution period. The 45-day timeline for the due process hearing in Rule 2365.1.6.16 starts the day after one of the following events:

(i) Both parties agree in writing to waive the resolution meeting and reject mediation;

(ii) After either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible;

(iii) If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or LEA withdraws from the mediation process.

(6) The timelines for resolution session may be shortened pursuant to an expedited hearing request under Rule 2365.1.6.17.

(c) Written settlement agreement. If a resolution to the dispute is reached at the session described in paragraph (a) of this section, the parties shall execute a legally binding agreement that is

(1) Signed by both the parent and a representative of the LEA who has the authority to bind the LEA; and

(2) Enforceable by filing in any state court of competent jurisdiction or in a district court of the United States.

(d) Agreement review period. If the parties execute an agreement pursuant to paragraph (c) of this section, a party may void the agreement within three business days of the agreement's execution. Nothing in this rule shall preclude either party from consulting with an attorney at any time.

2365.1.6.9 Time of Hearing; Withdrawal or Other Action for Dismissal of Hearing

(a) The hearing shall be scheduled to begin as soon as possible but no later than 35 days after expiration of the resolution period pursuant to Rule 2365.1.6.8(b), provided that when an expedited hearing under Rule 2365.1.6.17 is requested, the hearing shall be scheduled to begin no later than 20 days after the receipt of the request by the Commissioner.

(b) A parent may withdraw a request for a due process hearing without prejudice until such time as the parent retains legal counsel. "Withdrawal without prejudice" does not stop or in any other way alter the statutory period(s) of limitations described in Rule 2365.1.6.1.

(c) Upon motion by a party or by independent action of the hearing officer, the hearing officer may order dismissal of a complaint for failure of any party to prosecute.

2365.1.6.10 Voluntary Production of Information; Motion for Production of Information

(a) Each party shall attempt in good faith to make a complete response to requests, as soon as practicable, for the voluntary production of information.

(b) When a dispute between parties arises concerning a request for the voluntary production of information, releases or documents, any party may file a motion requesting that the hearing officer order the parties to comply with information requests.

(1) The motion shall be filed at least seven business days before the prehearing conference, and a response shall be filed and provided to the moving party at least one business day prior to the prehearing conference, or as soon as possible after receiving a notice of intent to object to all or part of a request for production.

(2) The moving party's motion shall:

(i) List with specificity the information it is seeking to discover; and

(ii) Set forth in detail those factors which it believes justify its request for information.

(3) When a party has demonstrated that such request for information is relevant to the issues described in the hearing notice or identified by the hearing officer as a result of the prehearing conference and is necessary for a full and fair presentation of the evidence at the hearing, the hearing officer shall grant the motion.

2365.1.6.11 Prehearing Conference Procedures

(a) The prehearing conference required by Rule 2365.1.6.4(b)(2) shall be conducted by a hearing officer at a neutral site located in or near the LEA in which the due process matter is pending. The prehearing conference shall be as follows:

(1) Detailed Written Statement: At least three days before the prehearing conference, the complaining party shall provide the hearing officer and the opposing party a detailed written statement of what he/she believes are the issues to be addressed in the due process hearing, including any procedural violations. At least one day before the prehearing conference, the opposing part(ies) shall provide to the hearing officer and the complaining party a detailed written statement of any defenses. Any procedural violations known to a party or defenses not raised at or before the prehearing conference may be excluded at the due process hearing at the discretion of the hearing officer.

(2) Witness List: At the prehearing conference, the parties shall provide to the hearing officer and the opposing parties a preliminary list of the witnesses they plan to call and a general summary of the testimony they expect from each witness. This list may be supplemented at the time of the final five day rule submissions.

(3) Statement of Facts: No later than the prehearing conference, each party shall provide to the hearing officer and the opposing party, a statement of facts. The intent of the statement of facts is to outline those facts which are not expected to be contested, so that only those issues which remain in dispute need be addressed at the hearing.

(4) Core Exhibits: No later than the prehearing conference, the LEA shall submit to the hearing officer and the parents a binder of proposed core exhibits consisting of the relevant portions of the child's file that the LEA expects will be introduced. Either party may supplement but not duplicate those proposed exhibits with the other material as long as the supplement is received by the hearing officer and the opposing party at least five days before the hearing.

(5) Order of Presentation at Hearing: The party that has initiated the hearing shall present its case first unless the hearing officer determines that the change in order of presentation would not materially prejudice any party's right to a full and fair hearing, and:

(i) The hearing would proceed in a more timely manner if the party not initiating the hearing presents their case first; or

(ii) The hearing would proceed in a more efficient manner if the party not initiating the hearing presents their case first.

(6) Hearing Officer's Prehearing Order: Following the prehearing conference, the hearing officer shall issue a prehearing order containing rulings on any motions heard at the conference, any decisions made about evidence or order of presentation, scheduling, or other related matters, and a clear and specific identification of the issues to be heard.

(7) Record of the Prehearing Conference: The hearing officer shall ensure that an electronic verbatim record shall be made of the prehearing conference. The recording shall become a part of the record of the case. Copies shall be made available to the parties on request.

2365.1.6.12 Use of Affidavits

(a) At hearing, parties may submit otherwise admissible testimony, in whole or in part, in the form of affidavits, so long as the witnesses are present at hearing for cross-examination by the opposing party.

(b) Testimony may also be submitted at hearing by affidavit, without an opportunity to cross examine the witness, by prior agreement of the opposing party.

(c) Affidavits to be introduced as evidence at hearing shall be disclosed to the opposing party no fewer than three business days prior to the hearing.

2365.1.6.13 Final Disclosure of Evidence Occurring Five Days before Hearing

(a) At least five business days prior to a hearing, each party shall disclose to all other parties all evidence, including a final witness list with a brief description of each witness's testimony and copies of documentary evidence including all evaluations

completed by that date and recommendations based on such evaluations, that the party intends to use at the hearing. If neither party objects, the parties shall submit copies of their exhibits to the hearing officer two business days prior to a hearing.

(b) Any evidence supplementing the core exhibits shall be legibly labeled in the upper right-hand corner with consecutive Arabic numerals as either "LEA Exhibit (Number)" or Parent Exhibit (number)", as appropriate. An index, by title, of all exhibits submitted shall also be exchanged.

(c) Unless the other party consents to the inclusion, a hearing officer may exclude evidence, including an evaluation or recommendation, not disclosed in accordance with this section.

2365.1.6.14 Notification Concerning Agreement

(a) If the parent and the LEA reach a settlement agreement prior to the hearing, the LEA shall notify the hearing officer in writing and include a written statement signed by both parties requesting the cancellation of the hearing and the dismissal of the case with prejudice.

(b) A settlement agreement, whether reached through a resolution session, mediation, or other means of negotiation between the parties, shall not constitute a final decision or order of the hearing officer.

(c) A legally binding settlement agreement, whether reached through a resolution session subject to a review period pursuant to Rule 2365.1.6.8(d), mediation, or other means of negotiation between the parties, shall be enforceable in a due process hearing, any State court of competent jurisdiction or in a district court of the United States.

2365.1.6.15 Hearing Procedures

(a) All hearings shall be electronically recorded by the hearing officer or his/her designee. The hearing officer shall also arrange for a stenographic recording of the hearing

(b) The order of the presentation shall be determined pursuant to Rule 2365.1.6.11(a)(5).

(c) Any party to a due process hearing has the right to:

(1) Be accompanied and advised by legal counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities, however, they may not be represented by a non-attorney;

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses and the production of relevant documents.

(3) Request that the hearing officer prohibit the introduction of affidavits pursuant to Rule 2365.1.6.12 that have not been disclosed to that party at least three business days before the hearing or any other evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;

(4) Obtain a written, or at the option of the parents, electronic, verbatim record of the completed hearing; and

(5) Obtain written, or, at the option of the parents, electronic findings of fact and decisions.

(6) The record of the hearing and the findings of fact and decisions shall be provided at no cost to the parents.

(d) Parents involved in a hearing may:

(1) Have the child who is the subject of the hearing present; and

(2) Open the hearing to the public. If a due process hearing is open to the public, the hearing officer shall seat the members of the public in such a way that does not interfere with the proceedings.

(e) Each party shall have one day to present its case, unless the hearing officer determines that additional time is necessary for a full, fair disclosure of the facts necessary to arrive at a conclusion. The party filing the due process complaint has the burden of proof. The time allowed for each party's presentation shall include both direct examination of its witnesses and cross examination of its witnesses by the opposing party.

(f) The hearing officer may limit the number and examination of witnesses to eliminate redundant, cumulative, or irrelevant testimony.

2365.1.6.16 Decision; Extension of 45-Day Period

(a) The Commissioner shall ensure that not later than 45 days after expiration of the resolution period under Rule 2365.1.6.8(b):

(1) A final decision is reached in the hearing;

(2) A copy of the decision is sent by first class mail to each of the parties; and

(3) The final decision includes a statement regarding the appeal rights pursuant to Rule 2365.1.8.

(b)A hearing officer may grant extensions of time beyond the period set out in (a) above, except as to expedited hearings, for specific periods of time 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.

(c) Decision of hearing officer

(1) Subject to subdivision (2) of this subsection, a hearing officer shall make a decision on substantive grounds based on a determination of whether the child received a FAPE.

(2) In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies--

(i) Impeded the child's right to a FAPE;

(ii) Significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the parents' child; or

(iii) Caused a deprivation of educational benefit.

(3) Nothing in this section shall be construed to preclude a hearing officer from ordering a LEA to comply with procedural requirements under Rule 2365.1 through 2365.1.13.

(4) The Vermont Department of Education, after deleting any personally identifiable information, shall:

(i) Transmit the hearing officer findings and decisions to the State Special Education Advisory Panel; and

(ii) Make those findings and decisions available to the public.

2365.1.6.17 Expedited Due Process Hearings

(a) An expedited due process hearing procedure shall be available for disciplinary issues in accordance with Rule 4313.3.

(b) The expedited procedure shall provide a full due process hearing consistent with the requirements of Rules 2365.1.6.2(c) and (g), 2365.1.6.3, 2365.1.6.4, 2365.1.6.7, 2365.1.6.8, 2365.1.6.10 through 2365.1.6.16, but under a restricted time schedule as set out in subsections (c) – (j) of this section.

(c) Expedited hearings shall:

(1) Not exceed two days; and

(2) Be scheduled to be heard within 20 school days where the issue before the hearing officer will be whether there is a substantial likelihood of injury to self or others if the child is returned to the placement from which the child was removed.

(d) Upon being appointed, the hearing officer shall immediately arrange with the parties two days of hearing to occur within 20 school days of the filing of a complaint under Rule 2365.1.17(c)(2). At the same time, the hearing officer shall schedule an expedited resolution session to be held no later than seven days of the receipt of the written complaint. Unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the complaint, the due process hearing may proceed. The hearing officer shall schedule a prehearing conference prior to the hearing.

(e) At least five business days prior to the hearing, each party shall disclose to all other parties all evaluations completed by that date and evidence to be offered at the hearing, and recommendations based on the offering party's evaluations that the party intends to use at the hearing. Any party to the hearing has the right to request that the hearing officer prohibit the introduction of evidence at the hearing that has not been disclosed to that party at least five business days before the hearing.

(f) Except for the timelines in subsections (c)(2), (d), (e), and (i), the hearing officer may waive any of the procedures in this section in a case, but only to the extent necessary to preserve the full and fair nature of the due process hearing. At the agreement of both parties, the hearing officer may reduce the timelines in subsections (c)(2), (d), (e), and (h).

(g) The hearing officer shall render a decision, including findings of fact and conclusions of law.

(h) The hearing officer shall mail a written decision to the parties by first class mail within 10 school days following the hearing.

(i) Any party aggrieved by a decision of the hearing officer may appeal the decision as provided in Rule 2365.1.8.

2365.1.7 Impartial Hearing Officer

(a) A hearing may not be conducted by a person who is an employee of the Department of Education or the LEA, or by any person having a personal or professional interest that would conflict with his or her objectivity in the hearing. A person who otherwise qualifies to conduct a hearing is not an employee of the Department solely because he or she is paid by the Department to serve as a hearing officer.

(b) The hearing officer shall be a licensed attorney who:

(i) Has the knowledge of, and the ability to understand, the provisions of the IDEA, federal and state regulations pertaining to the Act, and legal interpretations of the Act by federal and state courts;

(ii) Has the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

(iii) Has the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

(c) The Department shall keep a list of individuals to serve as hearing officers and that list shall contain a statement of the qualifications of each of those persons.

2365.1.8 Finality of a Due Process Hearing Decision; Appeal

(a) The decision of a hearing officer is final unless appealed to a state or federal court of competent jurisdiction within 90 days of the decision.

(b) Parties have right to appeal the hearing decision by filing a civil action in a federal district court or a state court of competent jurisdiction. An appeal from a due process hearing decision to a court of competent jurisdiction in accordance with Rule

2365.1.9 shall be commenced within 90 days from the notice of the final decision and not after.

2365.1.9 Civil Action

(a) Any party aggrieved by the findings and decision arising out of a due process hearing pursuant to Rule 2365.1.6 has the right to bring a civil action with respect to the matter. The action shall be commenced within 90 days of the hearing officer's decision in a state court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

(b) An award of attorneys' fees may be made pursuant to Rule 2365.1.10.

(c) In any action brought under paragraph (a) of this rule, the court:

(1) Receives the records of the administrative proceedings;

(2) Hears additional evidence at the request of a party; and

(3) Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

(d) Nothing in this rule restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, 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 section 615 of the Act, the procedures under Rule 2365.1.6 shall be exhausted to the same extent as would be required had the action been brought under section 615 of the Act.

2365.1.10 Attorneys' Fees

(a) In any action or proceeding brought under Section 1415 of the Act, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to--

(1) The prevailing party who is the parent of a child with a disability;

(2) To a prevailing party who is the Vermont Department of Education or a LEA against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

(3) To a prevailing party who is the Vermont Department of Education or a LEA against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

(b) Prohibition on use of funds.

(1) Funds under Part B of the IDEA may not be used to pay attorneys' fees or costs of a party related to any action or proceeding under Section 1415 of the IDEA and subpart E of the federal regulations relating to procedural safeguards.

(2) Paragraph (b)(1) of this section does not preclude a public agency from using funds under Part B of the Act for conducting an action or proceeding under Section 1415 of the Act.

(c) A court, in its discretion, may award reasonable attorneys' fees under Section 1415 of the Act consistent with the following:

(1) Fees awarded under Section 1415 of the Act shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this paragraph.

(2) (i) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under Section 1415 of the Act for services performed subsequent to the time of a written offer of settlement to a parent 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 an administrative proceeding, at any time more than 10 days before the proceeding begins;

(B) The offer is not accepted within 10 days; and

(C) The court or hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

(ii) Attorneys' fees may not be awarded relating to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial action.

(iii) A resolution session conducted pursuant to Rule 2365.1.6.8 shall not be considered--

(A) A meeting convened as a result of an administrative hearing or judicial action; or

(B) An administrative hearing or judicial action for purposes of this section.

(3) Notwithstanding paragraph (c)(2) of this section, an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

(4) Except as provided in paragraph (c)(5) of this section, the court reduces, accordingly, the amount of the attorneys' fees awarded under Section 1415 of the Act, if the court finds that--

(i) The parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

(ii) 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 comparable skills, reputation, and experience;

(iii) The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

(iv) The attorney representing the parent did not provide to the LEA the appropriate information in the due process request notice in accordance with Rule 2365.1.6.2.

(5) The provisions of paragraph (c)(4) of this section do not apply in any action or proceeding if the court finds that the State or LEA unreasonably protracted the final resolution of the action or proceeding or there was a violation of section 1415 of the IDEA.

2365.1.11 Child's Status During Proceedings

(a) Unless placed in an interim alternative educational setting pursuant to Rules 4313.1, 4313.2, and 4313.4, the child shall remain in his or her current placement while waiting for the decision in a due process hearing or appeal, unless the State or the LEA and the parents of the child agree to another placement. The current placement shall be the placement that was in the last implemented IEP.

(b)If the due process hearing involves an application for initial enrollment in public school, the child, with the consent of the parents, shall be placed in the public school until the completion of all the proceedings.

(c)If the complaint involves an application for initial services under Part B from a child who is transitioning from Part C of the IDEA to Part B and is no longer eligible for Part C services because the child has turned three, the LEA is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services under Rule 2365.1.3, then the LEA shall provide those special education and related services that are not in dispute between the parent and the LEA.

(d)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 State and the parents for purposes of paragraph (a), above.

2365.1.12 Transfer of Parental Rights at Age of Majority

(a) When a youth who is eligible for special education services reaches the age of eighteen:

(1) The LEA shall provide any notice required by these rules to both the youth and his or her parents; and

(2) All other rights accorded to parents under these rules transfer to the youth.

(b)When a youth who is eligible for special education services reaches the age of eighteen and is incarcerated in a correctional institution, all other rights accorded to

the parent transfer to the youth and any notice required by these rules shall be provided to both the youth and the parents.

(c) When a youth has been determined to be incompetent under State law, the guardian or educational surrogate parent shall receive any notice required by these rules.

(d) Whenever rights are transferred under this rule, the LEA shall notify the youth and the parents of the transfer of rights.

(e) Beginning one year before a youth reaches the age of 18, the youth's IEP shall include a statement that the youth has been informed of his or her rights under the IDEA, if any, that will transfer to the youth on reaching the age of 18.

(f) Rights afforded to parents under these rules transfer to the youth when the youth turns 18 years of age. All references to "parent" shall be read also to refer to a youth who has turned 18.

2365.2 Confidentiality of Information and Student Records

Definitions for the purposes of Rule 2365.2 through 2365.2.15:

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

(b) "Education records" means education records as defined in 34 CFR Part 99, Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA).

(c) "Participating agency" means any agency, school or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of IDEA.

(d) "Personally identifiable information" means:

(1) The name of a child, the child's parent, or other family member;

(2) The address of the child or the child's parents;

(3) A personal identifier such as the child's social security number or student identification number; or

(4) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty or make the child's identity easily traceable.

2365.2.1 Notice to Parents

(a) The Vermont Department of Education shall give notice, to the extent required by federal law that is adequate to fully inform parents about confidentiality requirements of §2365, including:

(1) A description of the extent that 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 shall 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 FERPA and implementing regulations in 34 CFR Part 99.

(b)Before any major identification, location, or evaluation activity, the notice shall be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity.

2365.2.2 Access Rights to Records

(a) Each participating agency shall permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the LEA under the IDEA. The participating agency shall comply with a request to inspect and review without unnecessary delay and before any meeting regarding an IEP or any administrative complaint, mediation, resolution session, due process hearing, or expedited hearing, and in no case more than 45 days after the request has been made.

(b) The right to inspect and review education records includes:

(1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;

(2) The right to request that the participating agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(3) The right to have a representative of the parent inspect and review the records.

(c) A participating agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable Vermont law governing such matters as guardianship, separation, and divorce.

2365.2.3 Record of Access

Each participating agency shall keep a record of parties obtaining access to a child's education records which are collected, maintained, or used under the IDEA, except access by parents and authorized employees of the participating agency. The record shall include the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

2365.2.4 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.

2365.2.5 List of Types and Locations of Information

Each participating agency shall provide parents on request a written list of the types and locations of education records collected, maintained, or used by the agency.

2365.2.6 Fees

(a) A participating agency may charge a fee for copies of records made for parents under these provisions, if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

(b) A participating agency may not charge a fee to search for or to retrieve information under these provisions.

2365.2.7 Amendment of Records at Parent's Request

(a) A parent or eligible child who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the LEA that maintains the information to amend the information.

(b) The participating agency shall decide whether to amend the information as requested within a reasonable period of time of receipt of the request.

(c) If the participating agency refuses to amend the information as requested, it shall inform the parent or eligible child of the right to a hearing under Rule 2365.2.9.

2365.2.8 Opportunity for a Hearing

The participating agency shall, on request, provide an opportunity for a hearing within the agency where the parent or eligible child may challenge information in education records on the grounds that it is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

2365.2.9 Result of Agency's Hearing

(a) If, as a result of the participating agency's hearing, the agency finds that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it shall amend the information as requested and so inform the parent in writing.

(b) If, as a result of the participating agency's hearing, the agency finds that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall inform the parent or eligible child of the right to place in the records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the LEA.

(c) Any explanation placed in the records of the child under this section shall:

(1) Be maintained by the participating agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and

(2) Disclose the parent's or eligible child's explanation, if the records of the child or the contested portion are disclosed by the LEA to any party.

2365.2.10 Hearing Procedures

A participating agency shall, at a minimum, meet the following requirements when conducting a hearing under this section. The agency's hearing shall:

(a) Be held within a reasonable time after the agency received the request for the hearing from the parent or eligible child;

(b) Give the parent or eligible child notice of the date, time, and place, reasonably in advance of the hearing;

(c) Have the hearing conducted by an official of the agency or other person appointed by the agency, who does not have a direct interest in the outcome of the hearing;

(d) Give the parent or eligible child a full and fair opportunity to present evidence relevant to the issues raised about information in the record. The parent or eligible child may, at his/her own expense, be assisted or represented by one or more individuals of his/her own choice, including an attorney;

(e) Issue a written decision within a reasonable period of time after the hearing; and

(f) Issue a decision based solely on the evidence presented at the hearing, and shall include a summary of the evidence and the reasons for the decision.

2365.2.11 Consent

(a) With the exception of disclosures permitted to law enforcement and judicial authorities for which parental consent is not required by FERPA, parental consent shall be obtained before personally identifiable information is--

(1) Disclosed to anyone other than officials of participating agencies collecting or using the information, subject to paragraph (b) and (c) of this section. or

(2) Used for any purpose other than meeting a requirement of these regulations.

(b) A participating agency subject to these regulations may not release information from education records to other participating agencies without parental consent, unless specifically authorized to do so by FERPA.

(c) Disclosure of special education and disciplinary records may be made without the prior written consent of the parent or a youth aged 18 or older, if:

(1) It is made in compliance with a lawfully issued subpoena or court order, and the school has made reasonable attempts to notify the parent or the youth aged 18 or older of the order or subpoena before complying with the request, so he or she may seek protective action from the court, such as limiting the scope of the subpoena or quashing it; and

(2) The subpoena or court order mandating disclosure specifies that the existence or the contents of, or the information furnished in response to, such subpoena or court order should not be disclosed by the receiving party; or

(3) It is to law enforcement or other appropriate parties, and, if the required information from the educational records is needed in connection with an emergency and knowledge of the information is necessary to protect the health or safety of the child or other individuals.

(4) If a parent refuses to give written consent when required for disclosure of personally identifiable information, the responsible LEA may seek an order from a due process hearing officer allowing disclosure.

2365.2.12 Safeguards

(a) Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

(b) One official in each participating agency shall be identified as responsible for ensuring the confidentiality of any personally identifiable information.

(c) A participating agency shall have policies or procedures to ensure that all persons collecting or using personally identifiable information receive training or instruction regarding Vermont's policies and procedures under this rule and 34 CFR Part 99.

(d) Each participating agency shall 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.

2365.2.13 Destruction of Information

(a) The LEA shall retain copies of the child's IEPs and special education eligibility evaluations, for a minimum of five years from the end of the school year in which the document was in effect.

(b) The participating agency shall inform parents when personally identifiable information collected, maintained, or used under the IDEA is no longer needed to provide educational services to the child. The information shall be destroyed at the request of the parents. However, a permanent record of a 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.

2365.2.14 Children's Rights

The Vermont Department of Education's policy shall be to protect the privacy rights of children with disabilities:

(a) When a child's educational records are transmitted, stored, accessed or destroyed, a responsible participating agency shall conform to the standards issued by the Vermont Department of Education.

(b) Under the regulations for FERPA at 34 CFR §99.5(a), the rights of parents regarding education records transfer to the youth at age 18.

(c) If the rights accorded to parents under these Rules are transferred to a youth who reaches the age of majority, consistent with Rule2365.1.13, the rights regarding educational records in Rule 2365 shall also be transferred to the youth. However, the participating agency shall provide any notice required under the procedural safeguards provisions of the IDEA to the youth and the parents.

2365.2.15 Disciplinary Information in Student Records

(a) A participating agency shall include in the records of a child receiving special education services a statement of any current or previous disciplinary action that has been taken against the child and transmit the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of children not receiving special education services.

(b) The statement shall include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child.

(c) If the child transfers from one school to another, the transmission of any of the child's records shall include both the child's current individualized education program and any statement of current or previous disciplinary action that has been taken against the child as consistent with subsection (a) of this section.

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 Commissioner 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 Commissioner, and at minimum, shall contain the following:

(1) Anticipated services to be provided to children with disabilities which will be made available;

(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 supervisory union 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 kindergarten through 12th grade resident students and for the extraordinary cost for essential early education children 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 (To be effective: July 1, 2010)

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

(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 may be claimed includes a school period or service block during which the above staff member is providing special education services as defined in Rule 2360.3.1 to a group of eight or fewer children, and the majority of the children are receiving the special education services, in accordance with their IEPs.

(2) In addition to the time for carrying out special education responsibilities, up to 20% of a special education staff member's time may be claimed, if that 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 children 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 children with disabilities;

(d) Student transportation which is required to implement a part of the instructional program for children 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 children with disabilities as allowed by their local contractual agreement;

(i) Special textbooks, workbooks, other classroom supplies and other instructional materials for a child with disabilities to the extent required by a child's IEP; and

(j) The reasonable cost of rental, purchase and maintenance of specialized equipment for a child 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

(a) 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 child's IEP or pursuant to a settlement agreement, including transportation to and from home for children 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

(a) 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 children with disabilities. However, if a supervisory union 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 Department 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 inservice activities relating to special education up to a maximum amount per year established by the Commissioner;

(4) Expense of a telephone in a special education classroom; and

(5) Advertising expenses in an amount not to exceed $3,000 annually per supervisory union.

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.

2366.2.5 Costs of Placement in Approved Independent Schools

(a) Subject to (b), reasonable and necessary costs, required by a child'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 child was determined to be eligible for special education and has been reviewed and received reimbursement approval through the residential review process;

(2) The child's placement has been recommended for reimbursement either through the residential review process or as an exception by the Commissioner pursuant to Rule 2228.2.(2) of a high cost day or residential placement; or

(3) The child's placement is required by a due process hearing order issued following a hearing on the merits or a court order.

(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 child'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

(a) 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;

(6) Technical Education tuition established under 16 V.S.A. §1552(a);

(7) Any costs related to the provision of special education to a youth that has reached age 22 unless the commissioner has granted an extension under 16 V.S.A. §2944(e); and

(8) Any costs related to parentally placed independent school children 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

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

(1) A plan for transitional and educational services shall be submitted to the Commissioner 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 Commissioner. The plan for transitional services, including estimated costs, shall receive approval from the Commissioner in order for reimbursement of the otherwise non-allowable costs to occur.

(2) The Commissioner'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 child when reporting and calculating extraordinary special education expenditures.

2366.3 Special Education Expenditures Defined

(a) "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:

(1) Revenue from federal aid for special education.

(2) Mainstream service costs, as defined in 16.V.S.A. §2961(c)(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:

(i) Regional interdisciplinary team grants pursuant to 16 V.S.A. §2967(b)(3),

(ii) Regional multi-handicapped specialist grants pursuant to 16 V.S.A. §2967(b)(4),

(iii) Grants for building effective strategies for teaching children (BEST) pursuant to 16 V.S.A. §2969(c),

(iv) Training grants pursuant to 16 V.S.A. §2969(d), and

(v) LEA reimbursement for state-placed students under 16 V.S.A. §2950(a).

2366.4 Financial Expenditure Report

(a) Each supervisory union shall submit a financial report as required by 16 V.S.A. §2968(a) for the supervisory union 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 Commissioner 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 supervisory union which does not file a complete final Special Education Expenditure Report for the preceding fiscal year by the deadline established in statute.

(b) A supervisory union may appeal the late fee to the Commissioner 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 supervisory union was unable to file the complete report by the statutory deadline and

(2) The action to be taken by the supervisory union to ensure that future reports will be completed and filed by the due date.

(c) The appeal shall only be granted if the report is filed by the time of the appeal.

(1) The Commissioner 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.

(2) The Commissioner shall not grant an appeal of a late filing fee for the same supervisory union for two consecutive fiscal years.

(d) 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 a supervisory union shall be divided among its member school district(s).

(1) The proration of the penalty shall depend on which reporting entities within the supervisory union failed to submit final reports by the due date.

(2) If two or more reporting entities failed to meet the deadline, the penalty shall be divided equally among the late reporting entities.

(3) The penalty due to late reports from a supervisory union or joint contract district shall be divided to the member school districts by the same proportion that the total net cost is divided to the member towns.

(4) 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 youth in the custody of the Department of Corrections, the commissioner of education shall pay for the costs of special education in accordance with the provisions of 28 V.S.A. §120.

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 supervisory unions 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).

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) A school district or supervisory union 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 child whose district of residence is the school district. In the case of a supervisory union, special education tuition shall not be charged for a child 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 child'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 child 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 Commissioner, the cost reported 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 school district of the child's residence unless otherwise agreed upon by the collaborative's members. However, the foregoing shall not be construed to mean that a collaborative or school district 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

(a) 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:

(i) 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.

(ii) 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.

(iii) 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.

(iv) 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 Students

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

(a) For the costs of educating a state placed student, the school district serving the child shall claim and the commissioner shall reimburse the allowable special education costs pursuant to 16 V.S.A. §2950(a).

(b) Allowable special education costs for elementary and secondary children 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 child'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).

2366.8 State Funding for Essential Early Education

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).

(a) Each school district 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 school district. 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 students enrolled within the district in grades 1 through 3. The Commissioner shall announce the estimated number of children three through five years of age in each school district 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 school district who are three through five years of age and are eligible for special education.

(c) Once a school district has fulfilled its obligations under subsection (1) of this rule, Essential Early Education grant funds may be used:

(1) To provide child find activities to determine Part C eligibility of a child who is younger than three years of age as specified by the 2007 Part C Interagency Agreement; or

(2) To provide services to preschool 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, a school district 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(c)(2). Applications for funding of individual residential placements shall undergo the residential review process as set forth in this Rule.

2366.9.2.1 Residential Placement Review Team

As needed, the Commissioner may appoint Department 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 child's disability, elsewhere in the State and in their region of the United States.

2366.9.2.2 Early Notification to the Commissioner

(a) Each LEA shall provide timely notification to the Commissioner, in writing, with a copy sent to the child's parents, that residential placement is being considered as a possible option for inclusion in the child'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 child 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 child's IEP.

Nothing herein shall be construed to mean that a child 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 Commissioner represents a decision of the IEP participants.

(b) Reimbursement for residential placements shall be for placements from the date the Department 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 Commissioner or designee after request by a LEA and recommendation of the residential review team.

2366.9.2.3 Timelines

Unless extraordinary circumstances are presented, each LEA shall notify the Commissioner 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 Commissioner, 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 child requires residential placement, the LEA shall forward the following documents to the Commissioner:

(a) The child's most recent Evaluation Plan and Report;

(b) Current IEP;

(c) Residential placement application form; and

(d) Any other relevant information.

2366.9.2.5 Residential Review Team Procedures

(a) 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 Commissioner may establish a review team. Within ten working days of receipt of the notice, the IEP or the parental request, the Commissioner or his designee shall notify the LEA and the parents whether or not a review team has been constituted or reconvened.

(b) The review team or any designated member thereof shall promptly investigate the need for residential placement of a child and provide technical assistance to the LEA concerning the need for residential placement, alternatives to residential placement, and alternative cost-effective residential facilities.

(c) 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:

(1) Advise the LEA and parents on alternatives to residential placement;

(2) Review the individualized education program calling for residential placement of a child to consider whether the child can be educated in a less restrictive environment;

(3) Assist the LEA in locating cost effective and appropriate residential facilities where necessary;

(4) Request, but not require, a new individualized education program when it believes that appropriate alternatives to residential placement are available; or

(5) Offer mediation as a means of resolving disputes relating to the need for residential placement, the particular residential facility recommended for a child with a disability or the associated costs.

(6) 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.

(d)The Commissioner may waive any provision of Rule 2366.9.2.5, not otherwise inconsistent with law for emergency placements or administrative efficiency.

(e) Where the team or its designee finds that the placement practices or policies of a 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.

(f) 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 Commissioner to the State Board of Education in accordance with Rule 1230.

(g)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.

(h)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)

(i) The Commissioner, or his designee, shall establish a system whereby the Department of Education identifies and maintains current information on residential facilities, or other programs in Vermont and elsewhere, that provide educational programs to children 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 Department 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 child does not require residential placement, the Commissioner 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 supervisory union, which receives IDEA-B federal funds, shall submit a local education agency plan as required by the Vermont Department of Education.

2367 (Reserved)

2368 Children with Disabilities Enrolled in Independent Schools and in Home Study

2368.1 Children with Disabilities Enrolled by their Parents in Independent Schools and in Home Study

Independent school children means children who are enrolled by their parents in kindergarten through grade twelve in recognized or approved independent schools, as defined in 16 V.S.A §166, including religious elementary and secondary schools. Home study children means children enrolled with the Vermont Department of Education in a home study program pursuant to 16 V.S.A § 166b. For the purposes of this section, home study children shall be deemed the same as children enrolled by their parents in an independent school.

This section does not apply to children who are either:

(a) Placed in independent schools by the LEA based on an IEP team's determination that the independent school, rather than the public school, is the appropriate placement and least restrictive environment for the child, or

(b) Attend an independent school because the child's local school district does not maintain a public school.

2368.1.1 Child-Find (34 CFR §300.131)

(a) Each LEA shall locate, identify, and evaluate all independent school and home study children with disabilities who are enrolled by their parents in independent, including religious, elementary and secondary schools and home study programs located in the LEA.

(b) Child find design. The LEA's child find process shall be designed to ensure--

(1) The equitable participation of independent school and home study children; and

(2) An accurate count of those children.

(c) Activities. In carrying out the requirements of this section, the LEA shall undertake activities similar to the activities undertaken for the LEA's public school children.

(d) Cost. The cost of carrying out the child find requirements in this section, including individual evaluations, may not be considered in determining if the LEA has met its proportionate share expenditures obligation.

(e) Completion period. The child find process shall be completed in a time period comparable to that for other children attending public schools in the supervisory including completion of the initial evaluations within a 60 day time period, consistent with the evaluation process described in Rules 2362.2.3(b), 2362.2.4, and 2362.2.5.

2368.1.2 Child-Count (34 CFR §300.133(c))

(a) Each supervisory union shall--

(1) Conduct the consultation required by Rule 2368.1.5.1; and

(2) Ensure that the count is conducted on December 1 of each year.

(b) The child count shall be used to determine the amount that the supervisory union shall spend on providing special education and related services to independent school and home study children with disabilities in the subsequent fiscal year.

(c) Supplement, not supplant. Local funds may supplement and in no case supplant the proportionate amount of IDEA-B flow through funds required to be expended for independent school and home study children who are eligible for special education.

2368.1.3 Proportionate Share of IDEA-B Funds (34 CFR §300.133(b))

The child count conducted on December 1 of each year shall be used to determine the amount of IDEA-B flow-through funds that the supervisory union shall reserve for

providing special education and related services to independent school and home study children with disabilities in grades kindergarten through grade 12 for the upcoming fiscal year.

(a) Formula. Each supervisory union shall spend the amount calculated as the proportionate share amount on providing special education and related services (including direct services) to elementary and secondary children with disabilities who are enrolled by their parents in independent school and home study programs located within the supervisory union. The proportionate share amount for each supervisory union is calculated as follows:

(1) For the IDEA-B Basic Flow Through grant, the proportionate share amount is calculated as the allocation for the upcoming fiscal year divided by the count of all eligible children ages 3 through 21 multiplied by the number of elementary and secondary children eligible for special education who are enrolled by their parents in independent schools or home study programs located in the supervisory union.

(2) For the IDEA-B PreSchool Flow Through grant, the proportionate share amount is calculated as the allocation for the upcoming fiscal year divided by the count of all eligible children ages 3 through 5 multiplied by the number of elementary children eligible for special education who are enrolled by their parents in independent schools or home study programs located in the supervisory union.

(b) If the supervisory union does not expend all of the amount calculated as proportionate share funds by the end of the fiscal year for which the funds were generated, the supervisory union must obligate the remaining funds for special education and related services (including direct services) for elementary and secondary student eligible for special education enrolled by their parents in independent schools or home study programs located in the supervisory union for one additional year.

2368.1.4 No Right to FAPE for Children with Disabilities Placed by Their Parents at Independent Schools or in Home Study (34 CFR §300.137(a))

No parentally-placed child has an entitlement to a FAPE in an independent school or home study program.

(a) Where services are provided, they shall be provided at the discretion of the LEA in which the independent school or home study program is located.

(b) The LEA of the parent's residence shall offer to make a FAPE available in the event the child's parent seeks enrollment in public school. Additionally, the LEA of residence shall be prepared to develop an IEP for such eligible child if he or she enrolls in public school.

2368.1.5 Services Determined

2368.1.5.1 Consultation (34 CFR §300.134)

To ensure timely and meaningful consultation, a LEA representative shall consult with independent school representatives and representatives of parents of independent school and home study children with disabilities during the design and development of special education and related services for the children regarding the following:

(a) Child find. The child find process, including--

(1) How parentally-placed independent school and home study children suspected of having a disability can participate equitably; and

(2) How parents, teachers, and independent school officials will be informed of the process.

(b) Proportionate share of funds. The determination of the proportionate share of federal funds available to serve independent school and home study children with disabilities under Rule 2368.1.3(b), including the determination of how the proportionate share of those funds was calculated.

(c) Consultation process. The consultation process among the LEA representative, independent school officials, and representatives of parents of independent school and home study children with disabilities, including how the process will operate throughout the school year to ensure that independent school and home study children identified through the child find process as children eligible for special education, can meaningfully participate in special education and related services.

(d) Provision of special education and related services. How, where, and by whom special education and related services will be provided for independent school and home study children with disabilities, including a discussion of--

(1) The types of services, including direct services and alternate service delivery mechanisms; and

(2) How special education and related services will be apportioned if funds are insufficient to serve all independent school and home study children; and

(3) How and when those decisions will be made;

(e) Written explanation by the LEA regarding services. How, if the LEA disagrees with the views of the independent school officials or parents of a home study child on the provision of services or the types of services (whether provided directly or through a contract) the LEA will provide to the independent school officials or home study parents a written explanation of the reasons why the LEA chose not to provide services directly or through a contract.

2368.1.5.2 Written Affirmation (34 CFR §300.135)

(a) When timely and meaningful consultation, as required by Rule 2368.1.5.1, has occurred, the LEA representative shall obtain a written affirmation signed by the representatives of participating independent schools and home study programs.

(b) If the representatives do not provide the affirmation within a reasonable period of time, the LEA representative shall forward documentation of the consultation process to the Department.

2368.1.5.3 Compliance (34 CFR §300.136)

(a) General. An independent school official or home study parent has the right to submit an administrative complaint to the Department that the LEA--

(1) Did not engage in consultation that was meaningful and timely; or

(2) Did not give due consideration to the views of the independent school official or home study parent.

(b) Procedure.

(1) If the independent school official or home study parent wishes to submit a complaint, the official or parent shall provide the Department the basis of the noncompliance by the LEA with the applicable independent school provisions in these rules; and

(2) The LEA shall forward the appropriate documentation to the Department.

(3) (i) If the independent school official or home study parent is dissatisfied with the decision of the Department, the official or parent may submit a complaint to the Secretary of the U.S. Office of Education by providing the information on noncompliance described in paragraph (b)(1) of this section; and

(ii) The Department shall forward the appropriate documentation to the Secretary.

2368.1.6 Services Plan & Record Keeping (34 CFR §300.132)

(a) Consistent with Rule 2368.1.3 and 2368.1.4, a services plan shall be developed and implemented for each child with a disability who has been designated by the LEA in which the independent school or home study program is located to receive special education and related services.

(b) Record keeping. Each LEA shall maintain in its records, and provide to the Department, the following information related to independent school and home study children:

(1) The number of children evaluated;

(2) The number of children determined to be children with disabilities; and

(3) The number of children served.

2368.1.7 Equitable Services Determined (34 CFR §300.137)

(a) No independent school or home study child who is eligible for special education and related services has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.

(b) Decisions.

(1) Decisions about the services that will be provided to independent school and home study children who are eligible for special education and related services shall be made in accordance with paragraph (c) of this section and Rule 2368.1.5.1(c).

(2) The LEA where the independent school or home study program is located shall make the final decisions with respect to the services to be provided to eligible independent school or home study children.

(c) Services plan for each child served under this section. If an eligible child is enrolled in an independent school or home study program by the child's parents and will receive special education or related services from a LEA, the LEA shall--

(1) Initiate and conduct meetings to develop, review, and revise a services plan for the child, in accordance with Rule 2368.1.7.1 (b); and

(2) Ensure that a representative of the independent school or home study program attends each meeting. If the representative cannot attend, the LEA shall use other methods to ensure participation by the independent school or home study program, including individual or conference telephone calls.

2368.1.7.1 Equitable Services Provided (34 CFR §300.138)

(a) General.

(1) The services provided to independent school and home study children who will be receiving services through a services plan shall be provided by personnel meeting the same standards as personnel providing services in the public schools.

(2) Independent school and home study children who are eligible for special education and related services and will be receiving services through a services plan may receive a different amount of services than children with disabilities in public schools.

(b) Services provided in accordance with a services plan.

(1) Each independent school or home study child who has been found eligible and who has been designated to receive services shall have a services plan that describes the specific special education and related services that the LEA will provide to the child in light of the services that the LEA has determined, through the process described in Rules 2368.1.5.1 and 2368.1.6.1, it will make available to independent school and home study children who are found eligible for services.

(2) The services plan shall, to the extent appropriate--

(i) Meet the requirements of an IEP with respect to the services provided; and

(ii) Be developed, reviewed, and revised consistent with the requirements for either plan.

2368.1.8 Location of Services; Transportation (34 CFR §300.139)

(a) Services on independent school or home study premises. Services to independent school and home study children on a services plan may be provided on the premises of independent, including religious, schools or home study program, to the extent consistent with law.

(b) Transportation.

(1) General.

(i) If necessary for the child to benefit from or participate in the services provided under this part, an independent school or home study child with a disability shall be provided transportation--

(A) From the child's school or the child's home to a site other than the independent school or home study location; and

(B) From the service site to the independent school, or to the child's home, depending on the timing of the services.

(ii) LEAs are not required to provide transportation from the child's home to the independent school.

(2) Cost of transportation. The cost of the transportation described in paragraph (b)(1)(i) of this section may be included in calculating whether the LEA has met the minimum proportionate share requirement.

2368.1.9 Funds May Not Benefit an Independent School or Home Study Program (34 CFR §300.141)

(a) A LEA may not use funds provided under Part B of the IDEA to finance the existing level of instruction in an independent school or home study program or to otherwise benefit the independent school or home study program.

(b) The LEA shall use funds provided under Part B of the IDEA to meet the special education and related services needs of independent school and home study children with disabilities, but not for--

(1) The needs of an independent school or home study program; or

(2) The general needs of the children enrolled in the independent school or home study program.

2368.1.10 Use of Public and Independent School Personnel to Provide Services (34 CFR §300.142)

(a) Provision of equitable services. The provision of services shall be provided:

(1) By employees of a LEA; or

(2) Through contract by the LEA with an individual, association, agency, organization, or other entity.

(b) Special education and related services provided to independent school and home study children with disabilities, including materials and equipment, shall be secular, neutral, and nonideological.

(c) Use of public school personnel. An LEA may use IDEA-B flow-through grant funds to make public school personnel available in other than public facilities--

(1) To the extent necessary to provide services under a services plan for independent school and home study children with disabilities; and

(2) If those services are not normally provided by the independent school.

(d) Use of independent school personnel. A LEA may use IDEA-B flow-through grant funds to pay for the services of an employee of an independent school to provide services under a services plan if--

(1) The employee performs the services outside of his or her regular hours of duty; and

(2) The employee performs the services under public supervision and control.

2368.1.11 Property, Equipment and Supplies (34 CFR §300.144)

(a) An LEA shall control and administer the funds used to provide special education and related services under Rules 2368.1.7and 2368.1.8, and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in the IDEA-B.

(b) The LEA may place equipment and supplies in an independent school or home study program for the period of time needed for the Part B program.

(c) The LEA shall ensure that the equipment and supplies placed in an independent school or home study program--

(1) Are used only for Part B purposes; and

(2) Can be removed from the independent school or home study program without remodeling the independent school or home study facility.

(d) The LEA shall remove equipment and supplies from an independent school or home study program if:

(1) The equipment and supplies are no longer needed for Part B purposes; or

(2) Removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes.

(e) No IDEA-B funds may be used for repairs, minor remodeling, or construction of independent school or home study facilities.

2368.1.12 Complaints (34 CFR §300.140)

Independent school and home study children with disabilities have the right to file a complaint for due process under Rule 2365.1.6 only for the purpose of pursuing complaints that a LEA has failed to meet its responsibilities with regard to child-find, including following procedures for evaluation and determination of eligibility. All other

complaints may be pursued by way of the Department of Education's administrative complaint procedure.

2368.2 School Districts without a Public School

A school district that does not maintain a public school or has not designated, in accordance with applicable law, an approved independent school at the grade level needed by a resident child eligible for special education, shall provide the child a free appropriate public education. All special education evaluations, planning and due process procedures, as required by these rules and by federal law, shall be made available to children who are referred for a special education evaluation or who are eligible for special education and to their parents. The location for IEP services shall be determined in the following manner:

(a) The choice of a specific school(s) appropriate to fulfill the IEP, including the requirements to educate the child in the least restrictive environment, shall be determined by a child's IEP team after the IEP is developed. If the IEP team does not reach consensus about the location of services, the LEA representative shall determine the location of services. This shall be communicated to the parents within five working days of this determination.

(b) If the parents choose to have their child served, pursuant to his or her IEP, at a school other than that selected by the IEP team or by the LEA representative, and the IEP team agrees that the IEP can be adequately implemented at the school chosen by the parents, the following shall be applicable:

(1) Public School: If the parents select a public school, the LEA shall pay any special education tuition or excess costs allowed by law.

(2) Independent School:

(i) If the parents select an independent school approved for special education purposes that is generally attended by general education children that a non-special education child from the LEA could choose to attend, the LEA shall fund the actual costs associated with the parents' placement minus any costs that would accrue to the parents of a non-special education child placed at the same school.

(ii) If the parents select an independent school not generally attended by general education children, the LEA shall pay the actual educational costs associated with the parents' placement to the amount that would have been spent on the school chosen by the IEP team provided the school selected by the parents is approved for special education in the area of the child's disability.

2368.3 Placement of Children by Parents if FAPE is at Issue

(a) LEAs are not required to pay for the cost of education, including special education and related services, of a child eligible for special education at an independent school or facility, if the LEA has offered to make a FAPE available to the child and the parents elected to place the child in an independent school or

facility. However, the LEA shall include that child in the population whose needs are addressed consistent with Rules 2368.1.1 through 2368.1.11.

(b)Reimbursement for independent school placement. If the parents of a child with a disability, who previously received special education and related services under the authority of a LEA, enroll the child in an independent elementary school, or secondary school without the consent of or referral by the LEA, a court or a hearing officer may require the LEA to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the LEA had not made FAPE available to the child in a timely manner prior to that enrollment and that the independent placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the Department and LEAs.

(c)Limitation on reimbursement. The cost of reimbursement described in paragraph (b) of this section may be reduced or denied--

(1) If--

(i) At the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the LEA to provide FAPE to their child, including stating their concerns and their intent to enroll their child in an independent school at public expense; or

(ii) At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the LEA of the information described in paragraph (c)(1)(i) of this section;

(2) If, prior to the parents' removal of the child from the public school, the LEA informed the parents, through the notice requirements described in Rule 2365.1.1 of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or

(3) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

(d)Exception. Notwithstanding the notice requirement in paragraph (c)(1) of this section, the cost of reimbursement:

(1) Shall not be reduced or denied for failure to provide the notice if:

(i) The school prevented the parent from providing the notice;

(ii) The parents had not been informed about the requirements placed on them in paragraph (c)(1) of this rule before they took action to place their child; or

(iii) Compliance with paragraph (c)(1) of this section would likely result in physical harm to the child; and

(2) May, at the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if:

(i) The parent is not literate or cannot write in English; or

(ii) Compliance with paragraph (c)(1) of this section would likely result in serious emotional harm to the child.

2369 Educational Surrogate Parents

(a) To ensure that the educational rights of an infant, toddler, or child are protected, an educational surrogate parent shall be assigned whenever the individual is eligible for special education or is being evaluated for special education eligibility, and one of the following applies:

(1) The parents of the child are not known or cannot be located after reasonable efforts;

(2) The child is a child in state custody through the Department of Children and Families or has a public guardian appointed by a Vermont court (18 VSA §§9301-9316); or

(3) The child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)) (34 CFR 300.519(a)(4).

(b) The Commissioner of Education or a designee shall assign an individual to act as an educational surrogate parent. The educational surrogate parent may represent the child in all matters relating to:

(1) The identification, evaluation, and educational placements of the child; and

(2) The provision of FAPE to the child.

(c) The Educational Surrogate Parent Program shall make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a LEA or other responsible agency determines that the child needs a surrogate.

(d) Before making the appointment, the Commissioner or designee shall assure that the person appointed as an educational surrogate parent:

(1) Has no personal or professional interest that conflicts with the interests of the child to whom he or she is assigned;

(2) Has knowledge and skills that ensure adequate representation of the child; and

(3) Is not an employee of the State Department of Education, the child's LEA, or any other agency that is involved in the education or care of the child.

(e) In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogates without regard to paragraph (d)(3).

(f) A foster parent or developmental home provider shall not automatically have the rights of a parent, but may be appointed by the Commissioner of Education or his or her designee to serve as an educational surrogate parent for the child, pursuant to subsections (a), (b), and (d) above.

(g)Nothing in this section shall be interpreted to diminish, or otherwise alter, any authority or responsibility of a state agency regarding general education decisions for a child in state custody pursuant to Chapters 49 and 55 of Title 33 or a vulnerable adult in state custody pursuant to Chapter 215 of Title 18.

Vocational-Technical Education

2370 Definitions

1. **Adult technical education -** means technical education provided to an adult student that is not part of a course of study leading to a diploma or degree.

2. **Adult student -** means a resident of Vermont, of any age, who has received a high school diploma.

3. **Career academy -** means a small learning community that serves a full range of students; that entails a college preparatory curriculum developed in the context of a career cluster; that integrates academic and technical instruction with work-based learning; that involves partnerships with employers, the community and higher education to create multiple opportunities and options for students to pursue careers; and that students can attend for two years.

4. **Career cluster -** is a broad career area as defined by the U.S. Department of Education that includes occupations that share a common a common set of foundation skills.

5. **Commissioner -** means the commissioner of the Vermont Department of Education or his/her designee.

6. **Collaborative program** - means a technical education program, a number of technical education programs or programs at a technical education center offered pursuant to an agreement between two or more supervisory districts or unions in accordance with 16 V.S.A. §267, for the purpose of co-operatively providing programs and services at a previously negotiated cost.

7. **Comprehensive high school -** is a high school other than a high school with a technical center that offers state approved technical education course(s) of study.

8. **Course of study -** means the units of academic, workplace, and occupational skill instruction of a career and technical education program that teach to the approved competency list and an appropriate student organization that supports the program and teaches citizenship and leadership skills.

9. **Full-time equivalent student (FTE) -** means a student who is enrolled an average of at least two an hundred forty minutes per day for a school year in a career and technical education program's course of study.

10. **Governance board -** means the school board that is legally responsible for operating a technical center or comprehensive high school.

11. **Net costs -** means the actual costs of providing technical education programs less federal and state sources of revenue.

12. **Overhead costs -** means the costs in a technical center associated with governance, financial services, student services shared with the home school, and plant maintenance and operation.

13. **Post-secondary technical education program -** means a program offered by a state-approved post-secondary institution that leads to a certificate or an associate degree and that prepares students for employment in specific occupations.

14. **Pre-tech programs -** means state-approved programs that provide students with preparatory services such as career counseling, academic assessment, applied academic instruction, and introductory career content knowledge and skills to better prepare them to choose and pursue a technical education program.

15. **Receiving district -** means a school district or a regional technical center school district receiving tuition on behalf of pupils to whom it furnishes technical education. The classification of a school district as a receiving district is not altered by reason of the participation of that district in a contract for management of the technical center under a collaborative agreement.

16. **Regional board -** refers to a board that represents all high schools in a region and is responsible for oversight of career and technical education in the region. The regional board can be a regional advisory board or a regional governance board.

17. **Satellite program** - is a technical education program that is offered by a technical center at a site outside the technical center facilities.

18. **Sending district -** means a school district paying tuition on behalf of pupils to a school district which furnishes technical education courses.

19. **Service region** - means the geographical area assigned by the state board to a technical center for which it is the provider of technical education.

20. **Special populations -** means those individuals who are defined as having special needs in the *Americans with Disabilities Act, 28 C.F.R. §35.104,* including*:*

Individuals with disabilities - means individuals with a physical or mental impairment that substantially limits one or more of the major life activities, a record of such an impairment, or being regarded as having an impairment.

(1) The phrase physical or mental impairment means:
   A. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine;
   B. Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(2) The phrase physical or mental impairment includes, but is not limited to, such contagious and non-contagious diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.

(3) The phrase physical or mental impairment does not include homosexuality or bisexuality.

(4) The phrase, "Major Life Activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(5) The phrase, "has a record of such an impairment" means has a history of, or has been mis-classified as having, a mental or physical impairment that substantially limits one or more major life activities.

(6) The phrase, "is regarded as having an impairment" means --
   A. Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a public entity as constituting such limitation
   B. Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such an impairment; or
   C. Has one of the impairments defined in paragraph (1) of this definition but is treated by a public entity as having such an impairment.

(7) The term, "Disability" does not include----
   A. Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;
   B. Compulsive gambling, kleptomania, or pyromania; or
   C. Psychoactive substance used disorder resulting from current illegal use of drugs.

Individuals from economically disadvantaged families, including foster children - means individuals who are in families that are determined to be low-income according to the latest available data from the Department of Commerce.

Individual preparing for non-traditional training and employment - means individuals enrolled in programs that lead to occupations in which one gender constitutes less than 25 percent of their workforce and are declared "Non-traditional" by the *Crosswalk of 1998 Nontraditional Occupations with Classification of Instructional Program Codes*.

Single parents - means individuals who are single heads of households that include children who are minors and unmarried pregnant women.

Displaced homemakers - means individuals who are re-entering the workforce after being a full-time parent.

Educationally disadvantaged individuals - means individuals who are dropouts or potential dropouts, individuals who are migrants, individuals who score below the 25th percentile on a standardized achievement or aptitude test, individuals whose secondary school grades are below 2.0 on a 4.0 scale, or who fails to attain minimum academic competencies. This definition does not include individuals with learning disabilities.

Individuals with limited English proficiency - means individuals whose native language is other than English and for whom English is a second language.

21. **State Board** - means the Vermont State Board of Education.

22. **Student** - when it appears without a qualifier (such as adult, post-secondary, etc.) means a Vermont resident of any age who has not been awarded a high school diploma. The holder of a GED (General Educational Development) Certificate is not considered to have been awarded a diploma.

23. **Student apprenticeship -** means a skill-based education program that coordinates and integrates classroom instruction with a structured work-based learning experience. Competencies for the program shall be approved by the state board and a student apprentice shall receive academic instruction and training in a skilled occupation which will prepare the student for post-secondary education, advanced training, or direct employment in a position higher than entry level.

24. **Student organization -** means an organization of secondary students relating to, complementing, and enriching a particular technical education program in which they are enrolled and that is designed to offer such students experience in leadership, citizenship, and occupational skills.

25. **Technical center -** means any of the 15 regional technical centers operating with state support on January 1, 2000 and any others so designated thereafter by rule of the State

Board.

26. **Technical education** - means any career and technical education programming designed to teach the academic, workplace, and occupational skills necessary for employment.

28. **Tech prep -** means a curriculum that (a) includes a secondary and post-secondary or apprenticeship curriculum, (b) involves up to two years of secondary programming and two years of post-secondary programming, (c) blends high level academic and technical courses, (d) culminates with an associate degree or a certificate after the completion of the post-secondary portion of the curriculum, and (e) emphasizes career planning and development that leads to employment.

29. **Tuition -** means an amount assessed to school districts based on the six semester average FTE enrollment from those towns to cover the costs of providing technical education that is not covered by federal, state or other sources of funds.

2371 Entitlement to Technical Education

1. An individual is entitled to enroll in and complete a technical education program of part-time or full-time duration if the individual:
   A. is at least in the 11th grade in a graded school or is at least 16 in a non-graded situation
   B. does not have a high school diploma
   C. applies for the program, and
   D. meets the admissions criteria set forth in the admissions policies of the technical center and the technical education program and is accepted in the program.

2. A student who is in the 10th grade may with the support of the sending school request admission to a technical center from the school offering the program. The school offering the program can admit the student if there is space available and if it is determined that the student has the maturity to successfully participate in the technical education program and meets admissions criteria.

3. Technical education programs shall not be available to students below age 16 in a non-graded educational setting or below the 10th grade without the prior approval of the commissioner.

4. Students in the 9th and 10th grades or below the age of 16 in a non-graded educational setting may be enrolled in pre-tech programs at the discretion of their sending school or, in the case of students not enrolled in public education, at the discretion of the school district in which they reside.

5. Students who have completed a technical education program may enroll in additional

technical education programming at the discretion of their sending schools if it is judged to best meet their career preparation needs and they are accepted by the technical center or comprehensive high school.

6. Enrollment in a high school shall not be a precondition for a student without a diploma to enroll in a technical education center. When a student who is not enrolled in a secondary school applies directly to and is accepted by a technical center, the school district of residence shall be notified within 10 days of acceptance. Funding for this enrollment shall be in accordance with existing statute.

7. The technical center shall provide program information to potential students within its region listing admissions requirements, employment opportunities, and other relevant information to assist the student in making a decision to enroll. Sending schools shall provide a reasonable opportunity for technical centers and comprehensive high schools to inform students in grades 7 through 12 of the educational opportunities available to them in the region.

8. A student's regular high school schedule or program shall be adjusted as necessary to ensure that there are not barriers to enrolling in a technical education program. Graduation requirements in excess of state minimum requirements shall be adjusted when, through no fault of the student, they present a barrier to enrollment in the technical education program of the student's choice.

2372. Statewide provision of technical education

1. Provision of technical education
   Technical education shall be provided statewide through seventeen service regions. Each service region shall be served by a technical center(s) and/or comprehensive high school(s). Before a school operates a technical education program(s), it shall obtain the support of the regional board overseeing technical education in the region and approval from the state board. All technical education programs approved by the state board shall be accessible to all students within the region and the state as stipulated by these regulations.

2. Area Technical Centers
   The state board may designate a school site as a technical center when the proposed center:
   A. offers state-approved secondary technical education programs in no fewer than five of the following career clusters beginning at the 11th grade level:
      - Agriculture & Natural Resources
      - Construction
      - Manufacturing
      - Logistics, Transportation, and Distribution Services
      - Information Technology Services
      - Wholesale/Retail Sales and Services
      - Financial Services
      - Hospitality and Tourism
      - Business and Administrative Services
      - Health Services
      - Human Services
      - Arts and Communications
      - Legal and Protective Services
      - Scientific Research, Engineering, and Technical Services
      - Education and Training Services
      - Public Administration/Government Services
   B. is necessary to meet the technical education needs of the region,
   C. develops admission policies that articulate the skills students need to participate successfully in and benefit from its technical education programs and that ensure equal access to these programs to all students from the service region served by the center,
   D. offers applied academic, employability and technical skill training and provide career guidance, co-op/apprenticeship options, career and technical student organizations, and appropriate adult technical education programming, and
   E. has or will have a governance board as provided by state statute.

2373 Adult and Post-secondary Technical Education Programming

1. Adult Technical Education
   Each technical center shall provide technical education and training programming that addresses the needs of adults and businesses in its region. Adult coordinators shall work closely with the regional workforce investment board and other organizations to identify the technical education and training needs of adults in the region. Courses and programs leading to industry credentials shall be developed and offered to address these regional needs.

2. Enrollment of Adult Students
   A. Adult students shall be enrolled in any secondary technical education program within

Vermont on a space available basis as long as they meet the admission requirements for all students entering that program. A technical center may charge up to 40 percent of the actual costs per student of offering the program. Technical centers shall determine whether space is available no later than two weeks prior to the first day of operation of the program.

B. Adult students who wish to be guaranteed enrollment in a secondary technical education program may be admitted but can be charged the full amount of the actual cost per student of operating the program.

C. Secondary programs may be developed for students who are not of a traditional age. Students without diplomas shall be funded as in any other secondary programs as long as the program is designed to lead to a diploma. Adults with diplomas who enroll in courses or programs created specifically for non-traditional aged students shall be charged as in any other secondary program.

3. Customized Training for Businesses within the Region
Technical centers may offer customized training to meet the needs of area businesses. Fees for such services shall be used to defray the costs of administration, instruction and use of facilities.

4. Post-secondary Technical Education
Each technical center shall coordinate use of the center with the Vermont State Colleges, other state programs including licensing, job training, and apprenticeship programs, and with other approved institutions for the provision of post-secondary technical education programs and charge fees not exceeding actual costs of operating the programs. The offering of post-secondary programs shall not increase the costs of offering secondary technical education programs.

2374 Service Regions

1. Assignment to Service Regions
School districts and independent high schools shall be assigned to a technical education service region as follows:

A. Barre Regional Vocational Technical Center: Spaulding UHSD #41,Barre City, Barre Town, Twinfield USD #33,Marshfield, Plainfield, Harwood UHSD #19, Duxbury, Fayston, Moretown, Waitsfield, Warren, Waterbury, UHSD #32, Berlin, Calais, East Montpelier, Middlesex, Worcester, Cabot High School, Montpelier High School.

B. Chittenden County Service Region: Burlington Technical Center, Center for Technology-Essex: Champlain Valley UHSD #15**,** Charlotte, Hinesburg, Shelburne, Williston, Mt. Mansfield UHSD #17**,** Bolton, Huntington, Jericho, Richmond, Underhill ID, Underhill Town, Burlington High School, Colchester High School, Milton High School, South Burlington High School, Bellows Free Academy-Fairfax, Fairfax,

Flectcher, Georgia,Winooski High School, Essex High School, Essex Junction, Essex Town, Grand Isle, North Hero, St. George, South Hero, Westford.

C. Cold Hollow Career Center: Enosburg Falls High School, Richford High School, Bakersfield, Berkshire, Montgomery.

D. Hartford Area Career and Technology Center: Woodstock UHSD #4, Barnard, Bridgewater, Pomfret, Reading, Killington, Woodstock, Hartford High School, Windsor High School, Hartland, Norwich, Weathersfield, West Windsor.

E. Green Mountain Technology and Career Center: Hazen UHSD #26, Greensboro, Hardwick, Woodbury, Lamoille UHSD #18, Belvidere, Cambridge, Eden, Hyde Park, Johnson, Waterville, Craftsbury Academy, Peoples' Academy-Morristown, Stowe High School, Elmore, Fletcher, Stannard, Wolcott.

F. North Country Career Center: Lake Region UHSD #24, Albany, Barton ID, Brownington, Glover, Irasburg, Orleans ID, Westmore, North Country UHSD #22 ,Brighton, Charleston, Derby, Holland, Jay, Lowell, Morgan, Newport City, Newport Town, Troy, Westfield, Coventry.

G. Northwest Technical Center: Bellows Free Academy-St. Albans, Missisquoi Valley UHSD #7 ,Franklin, Highgate, Swanton, Alburg, Fairfield, Georgia, Isle LaMotte, St. Albans City, St. Albans Town, Sheldon.

H. Patricia A. Hannaford Career Center: Mt. Abraham UHSD #28, Bristol, Lincoln, Monkton, New Haven, Starksboro, Vergennes UHSD #5, Addison, Ferrisburg, Panton, Vergennes ID, Waltham, Middlebury UHSD #3, Bridport, Cornwall, Middlebury ID, Ripton, Salisbury, Shoreham, Weybridge.

I. Randolph Area Vocational Center: Randolph UHSD #2, Braintree, Brookfield, Randolph, Whitcomb High School-Bethel, Chelsea High School, Northfield High School, Rochester High School, Royalton High School, Williamstown High School, Granville, Hancock, Orange, Pittsfield, Roxbury, Sharon, Strafford, Stockbridge, Tunbridge, Washington.

J. River Bend Career and Technical Center: USD #36 (Corinth, Topsham), OxBow UHSD #30, Bradford ID, Newbury, Blue Mt. USD #21, Groton, Ryegate, Wells River, Thetford, Rivendell Interstate School District, Fairlee, Vershire, West Fairlee.

K. Southeastern Vermont Career Education Center: Brattleboro UHSD #6 Brattleboro, Dummerston, Guilford, Putney, Vernon, Leland and Gray UHSD #34, Brookline, Jamaica, Newfane, Townshend, Windham, *Bellows Falls UHSD #27, Athens, Grafton, Rockingham, Westminster, Whitingham High School, Wilmington High School, Dover, Marlboro, Stratton, Wardsboro, Winhall.

L. Southwest Vermont Career Development Center: Mt. Anthony UHSD #14, Bennington ID, North Bennington ID, Pownal, Shaftsbury, Woodford, Arlington High School, Burr and Burton Academy, Danby, Dorset, Halifax, Manchester, Mt. Tabor, Pawlet, Readsboro, Rupert, Sandgate, Searsburg, Stamford, Sunderland.

M. St. Johnsbury Service Region - regional programs offered at Applied Technology Center at St. Johnsbury Academy, Lyndon Institute Technical Center: Concord High

School, Danville High School, Union #37, Sheffield, Wheelock, Barnet, Burke, East Haven, Granby, Guildhall, Kirby, Lunenburg, Lyndon, Maidstone, Newark, Peacham, St. Johnbury, Sutton, Walden, Waterford, Victory.

N. Stafford Technical Center: Fair Haven UHSD #16, Benson, Castleton, Fair Haven, Orwell, West Haven, Mill River USD #40, Clarendon, Shrewsbury, Wallingford, Otter Valley UHSD #8, Brandon, Goshen, Leicester, Pittsford, Sudbury, Whiting, Poultney High School, Proctor High School, Rutland High School, West Rutland School, Chittenden, Hubbardton, Ira, Mendon, Middletown Springs, Plymouth, Rutland Town, Tinmouth, Wells.

O. River Valley Technical Center: Green Mountain UHSD #35, Andover, Cavendish, Chester, Black River USD #39, Ludlow, Mt. Holly, Springfield High School, Baltimore, Landgrove, Londonderry, Peru, Weston, *Bellows Falls UHSD #27, Athens, Grafton, Rockingham, Westminister.

P. Canaan School :Bloomfield, Brunswick, Canaan, Lemington, Norton. Canaan School does not send to a regional technical center because it is geographically isolated and offers technical education programs as a comprehensive high school.

* Students enrolled in UHSD #27 may chose to go to Southeastern Vermont Career Education Center (Brattleboro), or River Valley Technical Center (Springfield).

2. Change in Service Region When Requested by a School District
   A. To request a change in service region, a school or school district shall notify the commissioner in writing.
   B. The commissioner, prior to making a recommendation to the state board, shall consult with the school districts, and the regional advisory boards that would be affected by a change in sending district service region assignment(s).
   C. The State Board shall grant a request by a school or school district to change service regions if:
      (1) The change will not significantly affect technical center program enrollments,
      (2) The change will not significantly increase the distance between the technical center and the high school,
      (3) The change will provide more opportunities to students, and
      (4) The fiscal impact of the change will not be so great that the technical centers affected by the change cannot accommodate it and that other schools in a service region will have to assume a significantly larger portion of the costs of operating the technical center.
   D. School districts that request a change in service region shall notify the affected centers and the Department of Education prior to November 1st of the preceding year.
   E. Students may complete their course of study at the school in which they began the program regardless of any change in service region granted their sending school.

3. Students Attending Technical Education Outside their Service Region
   A. Secondary students may apply for enrollment into programs offered at technical centers outside their service region when the center in their service region does not offer the program in which they wish to enroll or they are not able to enroll in the program of their choice. The school district of the students' residence shall pay tuition for that enrollment. Districts shall not be required to provide transportation to and from the technical center selected by the student.
   B. Secondary students attending public/independent high schools outside their service region may attend the technical center assigned to the academic high school in which they are enrolled. Sending districts shall pay the tuition but are not required to provide transportation to and from the technical center.
   C. Secondary students not attending an academic high school shall attend the technical center to which their district of residence has been assigned.

2375 Governance

1. A technical center shall be owned and governed by a board that is provided for and constituted in a fashion prescribed by state statute. These are:
   A. School Board of the Home School
      A technical center shall be owned and governed by the school board for the high school district in which the technical center is located pursuant to 16 V.S.A. § 1541 unless the region has received approval from the state board of education and the region's electorate to create a regional technical center school district for purposes of the governing and operating the center.
   B. Regional Board
      A region may create a regional technical center school district and a regional governance board to own, govern, and operate the center by following the procedures identified in 16 V.S.A. § 1572-1576.

2. Responsibilities of the board which manages a technical center:
   A board that operates a technical center shall:
   A. Provide secondary and adult technical education services,
   B. Annually set a budget for operation of the center,
   C. Establish the secondary and adult curriculum of the regional center, including courses of study offered,
   D. Provide for the decentralization of its technical programs, including the creation of rotating and satellite programs, whenever advantageous to the service region and/or for the expansion of distance learning opportunities,
   E. Employ and, as need requires, dismiss an adult services coordinator and a director of technical education and such qualified staff as is necessary to provide programs and services,

F. Develop criteria and priorities for student admission into technical education programs and services that address secondary students, school dropouts, adult students,
G. Annually evaluate the success of the center in serving all parts of its service region and in offering employment related adult training and education programs,
H. Annually evaluate the quality of each course of study and service offered by the center,
I. Coordinate use of the center with the Vermont state colleges, other state programs including licensing, job training and apprenticeship programs, and with other approved institutions, for the provision of post-secondary technical education programs and charge fees not exceeding the direct and indirect costs of the use of the center,
J. Offer programs designed to acquaint prospective students with technical programs, but which do not require an enrollment commitment,
K. Establish fees for building and equipment use after giving due consideration to the efficient and cost effective use of the center,
L. Establish a technical tuition,
M. Make the center's facilities and equipment available for providing technical education programs to adults, and
N. Use and maintain all facilities designed and constructed for technical education in a manner consistent with that purpose, except when those facilities are determined annually by the regional advisory board to not be needed for technical education and the commissioner or his/her designee so consents.

3. In addition to these responsibilities, the regional board of a regional technical center school district shall have the duties and authority identified in 16 V.S.A. §1577:
   A. Determine the educational policies of the center. Policies shall be of general application to the center, shall be in writing, codified, and made available to the public. Board policies shall be adopted at regular or special meetings. A board shall give public notice of its intent to adopt a board policy, stating the substance of the proposed policy, at least ten days prior to its adoption,
   B. Approve or disapprove rules and regulations that relate to the conduct and management of the center,
   C. Take any action required for the sound administration of the center
   D. Have the possession, care, control, and management of the property of the center,
   E. Keep the center buildings and grounds in good repair, suitably equipped, insured and in save and sanitary condition at all times,
   F. Lease or purchase real and personal property, and to sell, relocate, or discontinue use of real and personal property,
   G. Establish and maintain an adequate system of financial disbursement, accounting, control, and reporting procedures,
   H. Sue and be sued,
   I. Conduct its budget adoption in accordance with the terms approved by the state board,
   J. Employ such persons as may be required to carry out the work of the center and

dismiss any employee when necessary,

K. Provide all textbooks, learning materials, equipment and supplies,
L. Borrow money by issuance of bonds or notes, not in excess of anticipated revenue for the school year,
M. Apply for grants and to accept and expand grants and gifts,
N. Present informational materials to the electorate on any matter voted, and
O. Incur indebtedness under the conditions of 16 V.S.A. §1579.

4. Regional Advisory Board
When a technical center is governed by a high school board, it shall establish a regional advisory board. When the state board designates a service region for two or more comprehensive high schools, the boards of the high schools shall establish a joint regional advisory board. A regional advisory board shall include the membership required under 16 V.S.A. §1542. The regional advisory board shall meet at least four times during the school year. The purposes of the meetings are to review technical education programs and services and make written recommendations to the board/s operating technical education programs concerning:
A. the quality of services and programs for secondary and adult students,
B. the alignment of programs and services to available jobs,
C. the reasonableness of fees set for rental of facilities and equipment,
D. the appropriateness of the budget for operating the programs,
E. the success of the programs in serving all parts of the region, and
F. the adequacy of the provision to each student, beginning in grade nine, of appropriate career counseling and technical education information.

5. Disagreements
When a school board operating technical education programs rejects a written recommendation of a regional advisory board, or fails to adopt such a recommendation after 30 days, it shall notify the advisory board and the commissioner or designee in writing, stating its reason.

6. Workforce Investment Board
A regional advisory board, with the consent of the receiving district school board and the regional workforce investment board, may delegate its responsibilities to the regional workforce investment board. The receiving district school board may terminate this delegation by reconstituting the regional advisory board under the conditions set out in 16 V.S.A. § 1542.

7. Approval of technical education programs
The regional board for a technical education region shall be the body that approves a technical center or high school to offer a career and technical education program in that

region. In making that decision it shall consider the proposed programming under the following criteria:

A. There is a demonstrated need in the region for the skills taught by the program,
B. The school proposing the program is the most appropriate site for the program, and
C. The program is made accessible to all students in the region through establishing appropriate systems for transportation and scheduling.

8. Responsibilities of sending school districts
   A. Sending districts shall provide students in grades 11 and 12 with a genuine opportunity to participate fully and to benefit from technical education.
   B. Sending schools shall provide transportation for students enrolled in technical education at the center(s) assigned to the schools.
   C. If the regional technical education center serving the sending school does not offer the program desired by a student or that program has a full enrollment, the sending district shall enroll that student in another center in which the program is available. The school district in which the student is a resident shall pay tuition on behalf of that student who applies and is accepted but the sending school is not required to provide transportation.
   D. Schools shall provide on request names and addresses of students to all schools in the region offering state-approved career and technical education programs for the limited purpose of the those schools providing information to students and parents about the programs.
   E. Prior to admission to a technical education program, the sending school shall make available to the technical center staff the student records of accepted students. The record must include information on the student's grades in the basic academic skills and the student's performance on state assessments.
   F. Sending schools districts shall provide comprehensive career counseling and applied academics to students in the 9th and 10th grades to prepare students to appropriately elect and succeed in technical education programs.

2376 School Quality Procedures

1. For purposes of 16 V.S.A. §165, a technical center is a school.

2. Annual Plan
   School districts applying for state and/or federal assistance for technical education shall, in accordance with a schedule and on forms prescribed by the commissioner, submit an annual plan that describes their technical education programs and services. The plan shall include information and assurances that permit the commissioner to judge whether the technical education programs:
   A. Meet state and federal statutory and regulatory requirements,
   B. Are available and accessible throughout a center's service region for secondary and

adult students,

C. Make provisions for appropriate fiscal control and fiscal accountability and assure that annual statistical, descriptive, and financial reports will be submitted as required by the commissioner,
D. Ensure equal employment, educational opportunities, and affirmative action regardless of race, creed, color, national origin, gender, age, handicapping condition and/or disability, or sexual orientation, in compliance with state and federal laws, and
E. Make available information, programs and services to all students within the service region.

3. Action Plan
A school district receiving state and federal support for technical education shall annually update an action plan. The action plan shall:
A. Meet state and federal requirements for including specific stakeholders in its development, carrying out a review student performance, and identifying strategies to improve student performance
B. Be filed with the annual plan for the upcoming year.

4. School Report
A technical center receiving state and federal support for technical education shall annually issue a school report that identifies levels of student performance against school standards, accomplishments of the school, and the result of action plans. Comprehensive high schools shall provide this information on their technical education programming in their school report.

2377 Technical Education Program Evaluations

1. School and program evaluations shall satisfy requirements in 16 V.S.A., §§ 1533 and 1534.

2. The commissioner, in consultation with local administrators, shall schedule technical center evaluations so that all schools with state approved technical education programs are evaluated at least every five years.

3. A school offering state-approved technical education programs shall schedule a review of safety conditions conducted by the Department of Labor and Industry within the six months leading to each evaluation.

4. Evaluations shall be conducted in a manner and format prescribed by the commissioner.

2378 Safety in Technical Programs

1. Each school district that receives federal and/or state funds for technical education and/or pre-technical education shall develop a program of safety for every program, ensure that it is properly implemented, and provide oversight to ensure that the quality of the safety program is maintained.

2. Each school with a state approved technical education program shall limit the number of students to 16 per class during laboratory or field experiences when the program has as part of its curriculum one or more activities identified in hazardous occupations defined by Department of Labor Child Labor Bulletin 101. When a paraprofessional is added to the instructional staff, a total of 21 students per class may be assigned. Hazardous occupations include the following and any others as may be specified in amendments to Bulletin 101 in the future:
    - Manufacturing and storing explosives
    - Motor-vehicle driving and outside helper
    - Coal mining
    - Logging and sawmilling
    - Power-driven woodworking machines
    - Exposure to radioactive substances
    - Power-driven hoisting apparatus
    - Power-driven metal-forming punching and shearing machines
    - Mining other than coal mining
    - Slaughtering, or meatpacking, processing or rendering
    - Power-driven bakery machines
    - Manufacturing brick, tile, and kindred products
    - Power-driven circular saws, band saws, and guillotine shears
    - Wrecking, demolition, and ship-breaking operations
    - Roofing operators
    - Excavation operations
    - Specific operations within agriculture

3. Each school with a technical education program shall develop procedures to reach parent(s) or guardian(s) in case of an accident or emergency while students are at school or a school function off school sites.

2379 Required Staffing of Technical Centers

1. A technical center or comprehensive high school with more than five programs shall be eligible in accordance with these rules for state salary assistance for a director, assistant director, guidance coordinator, adult services coordinator, and co-operative

education/student apprenticeship coordinator.

2. Each school board operating a technical education center shall employ a licensed full-time director who is responsible for the administration and supervision of the technical education center. The director shall report directly to the superintendent of schools when the technical center is part of a supervisory union district, to the headmaster, when the center is operated by an independent school, or as specified by the governance structure of the technical center.

3. Each school board operating a technical education center shall employ a licensed technical education guidance coordinator to perform guidance and counseling services. The guidance coordinator shall report to the director of the technical center.

4. Each school board operating a technical education center shall employ a licensed adult services coordinator who shall be responsible for planning, coordinating, and supervising programs and services for adults.

5. Each school board operating a technical education center shall employ a licensed co-operative education/student apprenticeship coordinator to develop and oversee work-based learning opportunities for students enrolled at the technical center.

6. Each school board operating a technical education center shall employ at least one full-time licensed special populations teacher to ensure that students with special needs have the access and support they need to enroll and succeed in technical education programming. If the center employs instructors for Pre-tech programs with this licensure, this position shall be in addition to those employed in Pre-Tech.

7. Each school board operating a technical center shall consult with its regional advisory board on the employment and dismissal of the director and of the adult services coordinator.

8. A technical center shall be eligible for salary assistance for an assistant director if the technical center has a six-semester average of an enrollment of at least 150 FTE students and the sending school population is at least 30 percent of the total enrollment.

2380 Quality Criteria for Technical Education Programs & New Program Approval

1. A technical education program shall meet the following criteria in order to receive state approval:
   A. The program is based on industry standards that include occupational, workplace, and academic skills,
   B. The program competencies have been aligned with the Vermont Framework of

Standards and an embedded academic area has been identified and is of a scope that justifies the granting of an academic credit,

C. The program competencies have been approved by the State Board,
D. The program prepares students for one or more industry recognized credentials upon the completion of the program and/or is articulated with a post-secondary program that offers such a credential,
E. The program has one or more articulation agreements with post-secondary education and training programs,
F. Rubrics have been identified for assessing levels of competence,
G. The school has developed appropriate curriculum and provided the equipment and facilities needed to teach the core competencies of the program,
H. The program has a student organization as an integral part of its course of studies,
I. The program has an instructor with the required licensure and competencies to instruct in the program's core competencies,
J. The program is offered at least the minimum instructional time,
K. The program has strategies to achieve gender equity in enrollments and outcomes.

2. When planning to initiate or substantially change a career and technical education program, a school or a technical center shall submit to the commissioner a letter of intent to offer a new or revised program.

3. When the program has been developed or substantially changed, the school shall submit to the commissioner evidence that:
   A. There is current and projected growth in program related jobs within the region's or state's labor market,
   B. The wages paid for program related jobs exceed the average wages for all jobs in the region/state labor market or that there is a social need for individuals with the skills the program provides,
   C. The regional board has approved the development of the program and determined that the proposed program does not duplicate existing programs in the region,
   D. The program will have a program advisory committee that is comprised of people from program-related industry and post-secondary education and that has played an active role in the development of the program,
   E. The program meets the criteria for technical education programs.

4. If the commissioner has judged that these criteria have been met, s/he shall approve the program and issue it a code for reporting purposes. Enrollments in the program shall not be included for state and federal funding purposes until the program has been approved.

2381 Pre-Tech Programs

1. Pre-Tech Exploratory
   For students in the 9th and 10th grades for whom it has been determined by their high school that greater success can be experienced through intensive applied approaches to learning and career exploration and decision-making, technical centers and high schools may offer state-approved pre-tech exploratory programs that shall be eligible for technical education funding. These programs shall be designed to assist students in career exploration, including exploration of career areas non-traditional to their gender, and decision making. Such programs shall also include instruction in an applied setting of the language, mathematics, and science skills students shall need to enter technical education programs and to meet state and local graduation requirements.

2. Pre-Tech Foundational

3. Technical education programs that incorporate a three to four year sequence of courses to provide instruction in a career cluster may be preceded by pre-tech courses in the 9th and 10th grades. These courses shall familiarize students with the possible occupations in a career area and instruct students in the foundational core academic and occupational skills needed by workers in that career area. Such pre-tech foundational programs may be eligible technical education funding if they are recommended for approval by the regional board, meet the criteria for program approval and time requirements, and are approved by the state board of education.

2382 Instructional Time

1. Minimum Instructional Time
   A. The minimum number of instructional days that a school offering technical education programming shall be 175 days each school year.
   B. The minimum time of instruction in a technical education program shall be 600 minutes per week (an average of 120 minutes a day) for a half-day program including Pre-Tech Exploratory programs and 1200 minutes per week for a full-day program.
   C. Pre-Tech Foundational programs shall operate a minimum of 200 minutes per week (an average of 40 minutes per day).

2. Length of Program
   A. Technical education programs shall operate for as many semesters as determined by the state board to be necessary to prepare students to achieve an industry credential and/or pursue career opportunities.
   B. Technical education programs designated as career academies may be approved to operate for up to two full years.

2383 Program Completion

1. Each technical education program shall be based on a competency list approved by the state board. The school shall assess and report student performance on the core competencies of the competency list.

2. Successful Completion:
   A student who has been judged competent in 90 percent of the core competencies has completed the program successfully.

3. Academic Credit:
   Students who successfully complete a technical education program shall satisfy state graduation requirements as set forth below:

A. A student who successfully completes one of the technical education programs listed below shall receive one credit in science toward graduation:

Agricultural Mechanics
Auto Body Repair
Automotive Technology
Aviation Technology
Computer Technology Systems
Cosmetology
Culinary Arts
Dairy Production
Dental Assistant
Diesel Truck Mechanic/Operation
Diversified Agriculture
Electrical/Electronics Operations
Electrical/Plumbing Operations
Electronics
Engineering Technology
Environmental and Natural Resources Technology

Equine Science and Technology
Forestry and Natural Resources
Health Careers
Heavy Equipment
Horticulture
Industrial Mechanics
Protective Services
Video Production

B. A student who successfully completes one of the technical education programs listed below shall receive one credit in mathematics toward graduation:

Bookkeeping, Accounting, Micro-computer Accounting
Building Trades
CADD Engineering/Design
Graphic Arts
Hospitality, Travel Tourism and Marketing
Marketing Education
Millwork/Cabinet Making
Precision Machining Trades
Technical Connections
Welding and Metal Fabrications

C. A student who successfully completes one of the technical education programs listed below shall receive one credit in art toward graduation:

Design Illustration
Performing Arts
Performing Arts/Music Technology/ Jazz and Contemporary

D. A student who successfully completes one of the technical education programs listed below shall receive one credit in English toward graduation:

Medical Records
Office Occupations

E. A student who successfully completes one of the technical education programs listed below shall receive one credit in social studies toward graduation.
[This credit may not count as a credit in U.S. History or World History]:

Human Services Pre-Law

F. A technical education program may have more than one embedded academic credit if the state board determines that program content justifies it.
G. The commissioner shall review a technical education program for academic content used to meet state graduation requirements if there is the development of a new technical education program, revision of an existing program, or the combination of existing program components to create a specialized course of study.
H. After conducting the review, the commissioner shall make recommendations regarding academic credit to the state board. Nothing herein shall preclude a school board from granting additional academic credit for learning acquired in a technical education program.

2384 Program Advisory Committees

1. Each technical education program shall have a program advisory committee of at least five persons representing employers, employees, graduates, and other individuals knowledgeable about the occupations for which students are prepared in the program.

2. The program advisory committees shall meet at least twice a year to review and report to the director on the relevance of program content, levels of student performance, work-based learning opportunities, and strategies for program improvement.

2385 Work-based Learning

1. Types of Work-based Learning
Each technical education program shall include work-based learning to expose students to the realities of the occupation for which they are preparing and the application of academic, workplace and occupational skills they are acquiring in programs.

Work-based learning may include:

A. Job Shadowing that is the placement of a student in a work station where the student observes the business process. The time span is a total of two to eight hours and it is an unpaid situation where training plans are optional.
B. Career Work Experience (CWE) which is short term unpaid career exploration

experiences in an occupational field related to a student's program or interest. CWE is a non-paid situation and requires a training agreement but not a training plan.

C. Co-operative Technical Education (CTE) in which students are placed in paid work experiences at training stations directly related to their technical education program. A training plan and a training agreement are required.

D. Student Apprenticeship which is a state-approved program and in which students are placed in a work experience in accordance with the federal Fair Labor Standards Act.

2. Co-operative Work Experience

A. Technical education students shall be eligible as part of their technical education program to participate in co-operative technical education hereinafter referred to as "co-op."

B. All school-approved co-op placements shall meet the following requirements:

(1) Each placement shall be planned and supervised by the school and employer so that the experience contributes to the student's education and employability,

(2) The minimum age of students placed shall be 16. Student placements shall adhere to Child Labor Bulletin #101 and/or 102 (Child Labor Requirements in Non-Agricultural/Agricultural Occupation Under the Fair Labor Standards Act, 1977),

(3) All local, state, and federal laws applying to wage and hour regulations shall be followed,

(4) Students shall be covered by Workers' Compensation or comparable individual, school, or employer insurance while on the job,

(5) Students shall have on file at the school a properly completed training agreement signed by the student, the student's parent, the co-op coordinator and the employer,

(6) Students shall be visited regularly at the work site by the co-op coordinator to assess student progress,

(7) Students shall receive an educational program that addresses core technical competencies and tasks directly related to job-seeking and job-keeping skills, and

(8) Students shall be eligible to receive credit toward graduation upon successful completion of approved co-op programs when it is part of a state-approved course of study in technical education.

3. Student Apprenticeship

A. Secondary schools may operate a student apprenticeship program if:

(1) the proposed apprenticeship is approved by the regional advisory board,

(2) a licensed apprenticeship coordinator is employed to operate the program,

(3) a worksite has been identified that offers the opportunity for high skill training and employment and that provides a worksite mentor,

(4) a student apprenticeship agreement has been signed by the student, the employer, and the school board,
(5) the student apprenticeship program follows a state approved curriculum,
(6) the school carries appropriate liability and health insurance, and
(7) the student apprentice will satisfy all high school graduation requirements set forth by the state and the local school district.

B. A student may be terminated from the student apprenticeship program if:
(1) the student fails to fulfill the requirements of the student apprenticeship agreement as determined jointly by the school and the employer, the student has received at least two written notices from the student apprenticeship coordinator, specifying the nature of the deficiencies, and the student has been provided with reasonable time and necessary support services, including counseling, to address the problem areas, or
(2) the student violates company policies as prescribed in the employee handbook and/or commits a serious safety infraction.

C. Worksite mentors shall be selected by the employer based upon the following criteria:
(1) the proposed mentor has sufficient education and work experience in the areas described in the approved student apprenticeship curriculum,
(2) the proposed mentor is in a position to carry out the training activities specified in the approved student apprenticeship curriculum, or to designate other employees to engage in this activity,
(3) the proposed mentor is aware of the responsibilities accepted by the employer, the school, and the student as described in the student apprenticeship agreement, and
(4) the proposed mentor accepts these responsibilities by signing the apprenticeship agreement.

D. The state board shall provide an industry competency certificate to students completing a student apprenticeship program when the student completes, to the satisfaction of the employer and the school, the approved student apprenticeship program.

E. The State Board shall maintain a record of certificates, including competency and task attainment, issued to all student apprentices, shall make copies of these documents available to the student and the school, and shall make certified copies available to other parties upon the student's written request.

2386 Career Development

1. Schools offering technical education programs shall make good faith efforts to notify all eighth and tenth graders in their region and their parents of the technical education programs that they offer. They shall also provide information on the requirements for admission to the programs.

2. Technical centers shall be a regional resource for career development and provide information and training to middle and high schools in their region on applied academics, work-based learning, career exploration, and career decision making.

3. Technical centers shall align curricula with schools in the region to provide students with opportunities to meet Vermont's standards for student performance and to prepare for career opportunities.

2387 Student Services

1. Technical centers shall provide guidance services that include the development of career preparation plan for every student and assistance with developing and pursuing a post-high school plan.

2. Students identified as being eligible for services under the *Individuals with Disabilities Education Act*, and/or reasonable accommodations under *Section 504 of the Rehabilitation Act*, shall be considered for enrollment in technical education at a (an) IEP/504 Meeting. When an IEP/504 Team determines that the student would benefit from an appropriate placement in technical education, the student may apply for admission to the technical center. Members of the IEP/504 Team shall include the technical education Special Populations Teacher and the instructor of the desired technical education program.

3. Technical centers shall provide accommodations and other services required by special populations students to successfully complete their technical education program. The Special Populations Teacher shall support instructors in carrying out the accommodations, interpret the results of academic and vocational assessments, and design remedial academic exercises. In addition to meetings and record keeping, student services shall also include reinforcing employability skills and supervising services for students whose native language is other than English.

4. Technical centers shall have and implement a plan to encourage and support enrollment of students in technical programs that are in occupational areas non-traditional to their gender.

2388 Credits and Graduation Requirements

1. Grades earned in technical education courses shall not be altered by a public or independent school.

2. School boards shall not establish graduation requirements that have the effect of discouraging or preventing their students from attending technical education programs.

3. Credits earned in a state approved technical education program shall be honored by any public school in Vermont and applied toward any state and local graduation requirements in accordance with policies adopted by the school board of each school district and in accordance with these rules.

2389 Reporting Requirements for Technical Education

1. Technical Education Students
   Students whose enrollment will be counted for the funding of technical education are those students who attend a state-approved technical education program or a Pre-tech Exploratory program and who attend at least an average of 80 minutes a day each week. Students' minutes of attendance shall be reported and their FTE shall be calculated on the basis of 1 FTE equaling an average of 240 minutes of enrollment each day. No student shall be counted as enrolled in technical education as more than 1 FTE. Only the student's attendance in the technical education program's course of study shall be reported. Enrollments in other courses shall not be reported.

2. Pre-tech Foundational Students
   Students who are enrolled for at least an average of 40 minutes per day each week (at least 200 minutes per week) in a state-approved Pre-tech Foundational program may be reported and counted for technical education funding.

3. Reporting Periods
   On October 15 for the first semester and on March 15 for the second semester of each school year, schools that provide state approved technical education programs and pre-tech programs shall record enrollments by program in a format provided by the commissioner. The records shall be submitted to the commissioner by November 15 for the first semester and April 15 for the second semester or the first weekday thereafter if either falls on a weekend.

2390 Establishing the Costs for Technical Education

1. Separate Budget Center
   A. School districts offering technical education programs shall maintain separate cost records for all costs associated with secondary technical education. All revenues and costs shall be accounted for separately from regular secondary school revenues and costs (including Technology Education [Industrial Arts] and Home Economics) and from Adult Education revenues and costs.
   B. The Vermont School Accounting Manual (Handbook II Revised) shall be used to assure that standard sources of funds, instructional organization functions, and object codes are used.

2. Shared Costs
   Costs that are shared by technical education programs and other education programs offered by a school district shall be allocated by calculating technical education's percentage of total costs by using the following methods unless the regional board for the center and the school board for the district with whom the costs are shared both agree to an alternate method:

   - School board costs, fiscal services, superintendent's office, and other central office costs shall be allocated through the following formula:
     direct program costs for technical center
     divided by
     total of all direct program costs

   - Staff development/instructional staff support costs shall be allocated through the following formula:
     FTE teaching staff for technical center
     divided by
     Total FTE teaching staff

   - Building maintenance and operation costs shall be allocated through the following formula:
     square feet of technical center
     divided by
     total square feet

   - Student support services shall be allocated through the following formula:
     Student FTE for technical center
     divided by
     Total student FTE

   When an alternate method of sharing costs is adopted, the regional board and school board will notify the commissioner of the method being used in a notification signed by both board chairs that identifies the method and duration of the agreement.

3. Special Education Costs :
   The cost of any special education services provided to students with Individual Education Plans (IEPs) may be charged to those students' sending schools by following the special education excess cost procedures set forth in Rule 2366.2. The following procedures apply:
   A. The sending school district or agency responsible shall be given prior notice by the receiving district that an excess cost shall be charged,

B. Notice shall indicate the student's name, type and frequency of service to be provided, fee for services to be provided, and billing schedule,
C. Excess costs 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, and
D. Excess costs shall be billed quarterly and final billings for any fiscal year must be submitted to the sending school district prior to June 15th of that fiscal year.

2391 Calculation of Technical Education Tuition for Technical Centers

1. Technical centers shall separate the costs of secondary technical education programs.
   A. Income and expenditures for adult education, post-secondary education, and other programs and activities shall be tracked and reported in cost centers separate from secondary programming as required in Rule 2390.1A.
   B. Income and expenditures for programs and services that are not state-approved technical education programs provided by the technical center to students and schools shall be determined through agreements that are developed between the technical center and the school/s that benefit and that are approved by the regional board. Such agreements shall not result in an increase in the costs of providing technical education programs.
   C. Sending school districts and receiving school districts may develop agreements that allow students from sending schools to take courses outside their technical education program at the receiving school district in order to facilitate access to technical education. Such agreements shall specify how costs for these enrollments will be covered. If all sending school districts and the receiving school district are in agreement, these costs may be included in the technical education tuition. Otherwise, the sending school districts may be billed for these costs. In no case will enrollments in courses that are not part of the course of studies of a technical education program be reported as enrollment in a technical education program.

2. The technical center shall identify the actual costs of secondary technical education programming that includes all costs associated with that programming.

3. The technical center shall calculate tuition by:
   A. Subtracting from the actual costs all income through federal funds that support secondary technical education programming; the state grants for overhead, salary assistance and equipment; and local sources of income that was generated by activities funded by the actual costs or use of the facility
   B. If out-of-state students attend a technical center, the net costs after subtracting the above income are divided into two parts - an amount to be covered through tuition for

out-of-state students and an amount to be covered through funding for Vermont students. This allocation is calculated by adding [the (anticipated) number of full-time equivalent out-of-state students] + [the average of the full-time equivalent Vermont students for the prior three years] and then establishing the percentage of the total for each group. Net costs are divided into two parts based on these percentages.

4. Out-of-state tuition is calculated by dividing the costs to be covered by out-of-state enrollment by the anticipated number of out-of-state full-time equivalent students.

5. The amount to be collected through tuition for Vermont students is identified by taking the net costs for Vermont enrollments and subtracting:
   - an amount that results from multiplying the number of full-time equivalent students times the projected equalized pupil general state support grant, and
   - an amount that results from multiplying the number of full-time equivalent students times the projected state tuition reduction grant.

6. Tuition is calculated by dividing the amount to be collected by the average number of full-time equivalent students over the last six semesters.

7. Vermont sending districts shall be assessed their share of the costs of technical education by multiplying the tuition per student by the number of average full-time equivalent students they enrolled in the technical center over the prior six semesters.

8. Tuition and assessments shall be announced to sending districts by the February 1 prior to the school year in which they will be collected. The announced tuition shall also be reported to the commissioner by February 1.

2392 School District Payments to Technical Centers

1. The general state support grant for the six semester average number of full-time equivalent students enrolled by the school district in a technical center/s shall be deducted from that school district's total state support grant and sent directly to the technical center/s attended by resident students. Those payments shall be made by the commissioner at the same time as general student state support payments are made to school districts.

2. When tuition has been assessed to school districts, school districts shall make tuition payments within twenty days of receipt of their general state support grant. Additional assessments to specific schools districts to reimburse the costs of classes or services not covered by tuition shall be paid on the same schedule.

2393 Tuition Reconciliation

Deficits and Surpluses in excess of 3 percent of net costs (16 V.S.A.§ 834)

1. Surplus
   If sending districts have paid tuition in excess of 3 percent of net costs for the prior year they shall be credited that amount toward their current year assessment in proportion to their contribution or, if they do not have an assessment sufficient to use the credit, the board of the receiving district shall refund that amount to the sending districts by July 31 of the current fiscal year. Interest shall begin to accrue on the refund on December 1, at the rate of one-half percent per month.

2. Deficit
   If the receiving district has under-assessed tuition by 3 percent or more of net costs, the sending districts shall pay the amount of the underassessment. If payment is not made by July 31 of the year following the year of the underassessment, interest shall be owed the sending district at the rate one half percent per month starting the next day, August 1.

2394 Other Tuitions for Technical Education Programs

1. Comprehensive High School Tuition
   A. Comprehensive high schools may not establish a separate tuition for technical education. Technical education costs shall be included in the comprehensive high school standard tuition rate.
   B. School districts sending students to a comprehensive high school shall not have their general state support grant reduced or be assessed based on past full-time equivalent students. They shall pay only the current tuition charged by the comprehensive high school.

2. Tuition for Out-of-State Enrollments
   School districts that are geographically remote from Vermont technical centers and that have received permission from the state board of education may send students to technical education programs outside of Vermont. In those cases, the school districts shall receive general state support grants for those students and will pay the full tuition charged by the schools to which the students are sent.

3. Secondary Students in Post-secondary Technical Programs
   A secondary technical student may be enrolled in post-secondary technical courses or in a state-approved technical program offered by a post-secondary institution at the expense of the student's school district if the enrollment is accepted by the post-secondary institution, approved by the district of residence as being in the best interests of the student, and if the enrollment is approved for credit toward high school graduation requirements.

2395 State Support for Technical Education

The commissioner shall fund technical education programs in accordance with statutes and these regulations. However, no funds under these rules shall be paid to a school unless its annual plan is approved by the commissioner.

1. Tuition Assistance - Effective July 1, 2002, funds to help cover the costs of technical education programs and services shall be paid to a school offering technical education programs in an amount equal to 40 percent of the per equalized pupil general state support grant for that fiscal year for each full-time equivalent student enrolled in career and technical education programs in the school. Half of these funds shall be paid directly to schools on or before December 10 and April 30.

   Prior to July 1, 2002, tuition assistance shall be paid on the full-time equivalent enrollments at a level determined by amount of the state appropriation.

2. Salary Assistance
   A. The commissioner shall reimburse a school district operating a technical center or a comprehensive high school offering more than five programs for the specific positions set forth in these rules and in accordance with statutory allowances.
   B. When a technical center or comprehensive high school employs someone in such positions on a part-time basis, assistance shall be prorated to reflect the portion of the position devoted to the reimbursable activities. In order to receive salary assistance for a particular position, it must be staffed at least half-time.
   C. Salary Assistance shall be awarded as follows:
      (1) The salary for the director of technical education shall be reimbursed at 50 percent of the state average salary and benefits for the position or 50 percent of the actual salary and benefits, whichever is less
      (2) The salary of the guidance coordinator shall be reimbursed at 50 percent of the state average salary and benefits for the position or 50 percent of the actual salary and benefits, whichever is less.
      (3) The salary of the work-based learning coordinator shall be reimbursed at 35 percent of the state average salary and benefits for the position or 35 percent of the actual salary or benefits, whichever is less.
      (4) The salary of the adult services coordinator shall be reimbursed at a rate not to exceed 50 percent of actual salaries and benefits.
      (5) The salary of the assistant director, if the region is eligible, shall be reimbursed at 35 percent of the state average salary and benefits for the position or 35 percent of the actual salary or benefits, whichever is less. To be eligible, the technical center must have an six semester average full-time equivalent enrollment of 150 students and 30 percent of these students must be from sending schools.

3. Overhead Assistance
   A. Assistance shall be paid to technical centers to reimburse indirect costs or a portion thereof as appropriated. Overhead assistance shall be based on indirect costs of the school year two years prior to the year of payment. Technical centers shall receive the percentage of the amount appropriated that is the same as the percentage that their indirect costs are to the total indirect costs in the state.
   B. In the case of two or more comprehensive high schools which have been designated a service region, the commissioner shall pay the statewide average overhead cost to the region. This payment shall be made to the comprehensive high schools based on their full-time equivalent student enrollment.
   C. This subsection sunsets on June 30, 2002.

1. Transportation Assistance
   A. Sending schools shall provide transportation to up to two technical centers. The state shall provide transportation assistance to this limit.
   B. Transportation assistance shall be paid from the education fund to sending school districts to provide transportation of students to and from technical centers. Transportation assistance shall not be paid for transportation to or from students' homes or locations other than the sending school.
   C. The amount of transportation assistance shall be $1.50 per mile for the actual number of miles traveled, in 1998 dollars adjusted annually by the annual price index for state and local government purchases of goods and services. Reimbursement shall be made at this level except:
      (1) Where a school district reimburses for use of automobiles to transport students, the reimbursement shall be based on the school district reimbursement rate, or
      (2) Where bus transportation is contracted on a per mile basis and that amount is less than the transportation assistance level, the reimbursement shall be at the contracted rate.
   D. Payments shall be made on or before December 10 and June 10. Requests submitted on or following November 15 and May 15 shall be reimbursed in the next payment period. Requests submitted shall not be made for more than one previous semester.
   E. The sending school district shall report to the commissioner in a format prescribed by the commissioner the miles traveled on a typical day, the number of technical education and other students transported, and the number of days that students are transported for each semester.
   F. When the number of non-technical education students transported in a particular vehicle exceeds 50 percent of the total, reimbursement shal be prorated to reflect the proportion of students who are technical education students.

2396 Equipment: Inventory, Maintenance

1. An inventory of equipment purchased with state and federal funds shall be up-dated and maintained at each school making such purchases. The inventory shall include at least the following: source of funds used, date of purchase, generic name, brand name, model, serial number, quantity, program assignment, and location.

2. Disposal of equipment
   When a school is disposing of equipment purchased with state or federal funds, it shall dispose of it in the following order of priority:
   A. The equipment shall be moved to another state approved technical education program within the school and the inventory updated; or
   B. The equipment shall be sold to other schools that operate state approved technical education programs and the inventory updated; or
   C. The equipment shall be offered for sale on the open market and the Department notified before the sale.

4. When equipment purchased with state funds as part of a construction project or with federal funds with a current value of $5,000 or more and it is sold, a school shall refund to the state or federal government the same percentage of the sale price as the percentage of the purchase price covered by state or federal funds.

5. Adequate maintenance procedures shall be developed and implemented to keep the equipment in good condition.

2397 Use and Maintenance of Technical Education Facilities

1. School boards that operate area technical centers shall annually submit to the commissioner assurances that all facilities designed and constructed for technical education are maintained for the use of providing regional technical education.

2. The receiving school district board may request permission from the commissioner to use technical education facilities for general education purposes if the regional board for technical education has determined that they are not needed for technical education programming and services.

3. A request for use of technical education facilities for general education purposes shall:
   A. be submitted in writing,
   B. include a recommendation from the Regional Advisory Board, and
   C. include a time frame for use of the facilities for general education purposes.

4. At such time as the regional board establishes that space released for general education purposes is again needed for technical education, the regional board shall notify the

commissioner and the school board using the space before the end of the school year preceding the school year in which it is recommended for reuse for technical education. The commissioner shall verify the need and, if warranted, direct the school board to reallocate the space for technical education purposes.

2398 Collaborative Programs

1. Two or more supervisory districts / unions may offer collaborative technical education programs and services in accordance with an agreement entered into pursuant to 16 V.S.A. § 267.
   A. The agreement shall include a description of services to be provided and the cost for each participating district.
   B. Participating districts shall seek the advice of their regional advisory board/s prior to entering into an agreement.
   C. Notice of tuition shall be issued by the administrative district of the collaborative program to the participating school boards as set forth in 16 V.S.A. § 826(a).

2400 VERMONT ADULT EDUCATION RULES

Rules 2390 through 2396 are repealed

The following rules are added:

2400 Adult Education

2401 Statement of Purpose

These rules establish a state Adult Education Board to define policies and oversee the development and operations of Department of Education adult education programs in Vermont. These rules further clarify policies with respect to the Adult Basic Education Program, Adult Diploma Program, Vermont Literacy Resource Center, Adult Technical Education, Even Start, and General Educational Development Program.

The purpose of Adult Education programs is to offer adults the opportunity to acquire the level of education and technical training skills necessary for active participation as family members, citizens and learners, and for economic self-sufficiency. Adult Education programs seek to expand educational opportunities and enable eligible adults to continue their education to at least the level of secondary school completion.

2402 Statutory Authority
16 VSA §164, (7) and (13); 16 VSA §1049
Adult Education Act, P.L. 91-230 as amended from time to time (20 U.S.C. §1232 (a));
45 C.F.R. Parts 166, 166a, 166b and 166c
Adult Technical Education, 16 VSA §1553
Even Start Family Literacy Program, 20 U.S.C. §2741
State Literacy Resource Centers, 20 U.S.C. §§1205a and 1208aa

2403 Definitions
Adult Education, as used in these rules, means the process for the acquisition of skills and knowledge equivalent to that of secondary education provided in a manner responsive to the unique needs of individual learners, families and their communities.

2404 Adult Education Board
There is hereby created a state adult education board which shall be known as the "Vermont Adult Education Board" (hereinafter "Board"). The Board shall be appointed by the Vermont State Board of Education and shall comprise at least nine and not more than fifteen members who represent a broad spectrum of occupations, perspectives, interests and

geographic locations within the state and who possess a strong commitment to adult literacy but who have no pecuniary or other interest which conflicts with or creates an appearance of conflict with board responsibilities. Vermont Literacy Board members in office on the effective date of these rules shall complete their terms. Thereafter each vacancy shall be filled for a term of three years. Terms of office shall begin on July 1. Members may be re-appointed.

Annually the Board shall elect one member to serve as chair and one member to serve as vice-chair.

Committees and subcommittees may be appointed by the chair and such committees and subcommittees may include non-Board members.

The Board shall develop an annual policy agenda in consultation with the Commissioner, State Board of Education, parties interested in adult education and the public. The policy agenda shall identify new issues for study and action as well as ongoing work to be completed by the Board.

2405 Duties of the Vermont Adult Education Board

2405.1 The Board under the direction of the Vermont State Board of Education shall exercise policy authority over and define the mission and plan of action for the following Department of Education Programs: Adult Basic Education, Adult Technical Education, Adult Diploma Program, General Educational Development Program, Even Start Program, and Vermont Literacy Resource Center.

2405.2 The Board shall report quarterly to the Vermont State Board of Education and more frequently, as requested, to the Commissioner of Education.

2405.3 The Board shall propose to the State Board of Education and Commissioner methods to unify the Department of Education's adult programming into an adult education system related to public policy goals.

2405.4 The Board shall provide leadership and advocacy for adult education with policy makers, funders, providers, and the general public.

With respect to Adult Education Programs:

2405.5 For those programs identified in 2405.1 that require a state plan, the Board shall conduct the necessary planning process.

2405.6 The Board shall oversee the development, refinement and conduct of the regional adult education "Request for Proposals" process, with the approval of the State Board of Education, for the distribution of state and federal funds. In so doing, the Board shall promote regional collaboration and ensure equitable access to services throughout Vermont.

2405.7 The Board shall monitor progress of funded programs for fiscal and programmatic accountability and report thereon to the State Board of Education.

2410 Adult Basic Education Funding Formula

The funding formula for allocating Adult Basic Education funds shall be calculated on a county basis and shall be as follows:

2410.1 each county shall receive a base allocation of $30,000.00.

2410.2 70% of the remaining funds available for allocation shall be allocated on the basis of comparative need as measured statewide as follows:

15% based upon the statewide percentage in the county of unemployed or underemployed persons without a high school diploma.

50% based upon the statewide percentage in the county of persons who are 16 years of age or older, not enrolled in school and without a high school diploma.

20% based upon the statewide percentage in the county of persons living at 125% of poverty.

15% based upon the statewide percentage in the county of persons in the categories of offenders, mothers without high school diplomas and persons for whom English is a second language.

2410.3 30% of the remaining funds available for allocation shall be allocated on the basis of the comparative density of need within each county as follows:

15% based upon each county's density of unemployed and underemployed persons without a high school diploma.

50% based upon each county's density of persons 16 years of age or older, not enrolled in school and without a high school diploma.

20% based upon each county's density of persons living at 125% of poverty.

15% based upon each county's density of persons in the categories of offenders, mothers without high school diplomas and persons for whom English is a second language.

2411 Transition Provision

Notwithstanding the provisions of Rule 2410, no county shall receive less funding than that awarded in FY 1994, unless the total amount available for allocation has been reduced from the FY 1994 basic grant award total. In such cases, the reduction shall be pro-rated proportionately to all counties.

All monies available for the ABE basic grant award that exceed the FY 1994 basic grant award shall be applied to continue the implementation of Rule 2410 until such time as Rule 2410 is fully implemented. During this transition period, a county that under the formula would receive less than the amount it received in FY 1994 would receive the amount it received in FY 1994.

9/1/2004

2500 SCHOOL ACCOUNTABILITY SYSTEM BASED ON STUDENT ACHIEVEMENT

2505 Statutory Authority

16 V.S.A. § §164 (9) & (17) and 165 (b), as amended by Sec. 2, Act 64 of 2003; Sec. 96 of Act 71 of 1998 and Title I of the No Child Left Behind Act (NCLBA) of 2001, 20 U.S.C. § 6311 et seq.

2510 Statement of Purpose

The purposes of these rules are to: (1) establish a process for identifying public schools and Local Educational Agencies (LEA) in need of improving student performance – and those with outstanding performance – in relation to the content standards set forth in *Vermont's Framework of Standards and Learning Opportunities* and the *Grade Level Expectations for Mathematics and English Language Arts* associated therewith, and (2) provide for technical assistance to schools and LEAs that are not making sufficient progress and, as necessary, require further actions to ensure that students in those schools and LEAs have opportunities to meet such standards.

2515 Statement of Policy and System Overview

The accountability system set forth in these rules is designed to fulfill the student performance accountability requirements of 16 V.S.A §165.

The rules provide for a method for aggregating state assessment results into two achievement indexes, in mathematics and in English Language Arts (ELA), from a number of student performance measures over time. These indexes are developed through the assignment of points to the achievement levels of all students who take assessments in a school or LEA.

The Commissioner of Education shall annually determine whether schools and LEAs make Adequate Yearly Progress (AYP).

The Commissioner will ensure the provision of technical assistance to schools and LEAs that make insufficient progress. Appeals processes are established for accountability calculations and for consequences. A State Board review of the Commissioner's recommendations for consequences for schools and LEAs that have not made AYP for four consecutive years is also established.

2520 Definitions

The following definitions apply and may be further described in the Operations Manual.

"Academic Indicators" are student performance measures closely associated with academic achievement. Graduation Rate shall be used as the Academic Indicator for any school or LEA containing grades 9-12.

"Adequate Yearly Progress (AYP)": A school or LEA makes AYP when it meets the applicable criteria in the following elements:

- ELA Achievement Index
- Mathematics Achievement Index
- Participation Rate
- Academic Indicator

"All Student Group" means all students enrolled in the school in the assessed grades for the full academic year.

"Alternate Assessment" means an assessment for students for whom the regular assessment or the regular assessment with accommodations is not appropriate, as determined by the IEP team.

"Annual Measurable Objective (AMO)" means the annual target on the achievement indexes.

"Assessment" means the process of measuring student achievement.

"Confidence Interval" means the statistical method used to ensure the reliability of one or more elements of the AYP decision.

"English Language Arts (ELA) Achievement Index" means the index containing combined ELA state assessment results for a school or LEA.

"Full Academic Year": When state assessments are given in the spring, the full academic year is defined as beginning on the first Tuesday in September of that year. When state assessment are given in the fall, the full academic year is defined as beginning on the first Tuesday in September of the previous year.

"Local Education Agency (LEA)" means the school district which operates a school at elementary, middle and/or high school level, unless otherwise determined by legislation.

"Mathematics Achievement Index" means the index containing combined math state assessment results for a school or LEA.

"One Year of Exceptional Growth" means the method by which AYP is met when two years of assessment results meet the AMO without the use of a confidence interval.

"Participation Rate" means the percentage of students in a school or LEA who take state assessments; it is calculated by dividing the number of students who participate in all regular or alternate state assessments included in the accountability system by the number of students enrolled in a school or LEA on the day before the first day of the official test period.

"Safe Harbor" is a determination of whether a school or LEA has met AYP because of significant improvement in student achievement, even if this achievement has not been sufficient to meet the AMO.

"Title I" means Title I of NCLBA.

2525 Operations Manual for the Accountability System Based on Student Achievement

The Commissioner shall prepare an Operations Manual. It shall be approved by the State Board – and may be revised from time to time – through a public process pursuant to written procedures developed in advance by the Commissioner. The process shall include, at minimum:

- Notice on the Department's Web site and in newspapers of general circulation in all areas of the state, and provision of copies to anyone who requests
- Sending the proposed Manual and any proposed revisions to educational organizations, the Legislative Committee on Administrative Rules and the No Child Left Behind Oversight Committee
- A reasonable period for written public comment
- One or more public hearings, and
- Consideration and approval of the Manual and any proposed revisions at a duly warned regular State Board meeting

The Operations Manual shall contain practices to be used by the Department in the discharge of its powers and duties under these rules and under its statutory authority that do not alter or affect substantive legal rights. It shall include, but not be limited to, the following:

- Criteria or formulae for the calculation of achievement indexes, statistically significant size of student groups for accountability determinations, selection of and criteria for meeting academic indicators, application of the participation rate, calculation of "one-year exceptional growth" and "safe harbor", the process and criteria for Small School Reviews and the calculation of AYP for schools with anomalous grade configurations

- Criteria for permitting exemptions from assessment

- Criteria and process for public recognition for outstanding performance by schools and LEAs

- Table of Annual Measurable Objectives

- Explanation of the use of confidence intervals in AYP decisions.

2528 Technical Advisory Panel (TAP)

The Commissioner shall appoint individuals experienced in the field of educational assessment to the Technical Advisory Panel (TAP). Its members shall advise the Commissioner on technical issues related to state and local assessments, thereby ensuring that Vermont's Comprehensive Assessment System and the Accountability System Based on Student Performance are technically and educationally sound.

2530 Committee of Practitioners (CP)

The Commissioner shall appoint representatives of local educational agencies, educators, principals, pupil services personnel, administrators and parents to the Committee of

Practitioners. The CP fulfills the federal requirement for consultation and shall advise the Commissioner on issues related to the effects of the assessment and accountability systems on schools' instructional programs, with a particular focus on equal opportunities to learn as well as other requirements for consultation under federal law.

2535 Validity of State Assessment Results and Other AYP Determination Data

The Commissioner, after consulting with TAP, CP, and the State Board, shall annually determine the validity of state assessment results and other data (e.g., graduation rate, academic indicators, and participation rate) prior to their use in making AYP determinations.

2540 Accountability for All Students and Annual Determinations

Schools and LEAs shall ensure that all students are appropriately included in calculating the participation rate. The results of all students enrolled in the school or LEA for the full academic year shall be included in the Mathematics and ELA Achievement Indexes. There shall be an annual determination of AYP for all schools and LEAs.

2545 Accountability Determinations for AYP Groups

A determination of AYP shall be made for the All Student Group in each school and LEA. AYP decisions shall also be made for each of the following groups of students, when they have statistically reliable numbers of students present in the school or LEA:

Economically Disadvantaged Students
Students with Disabilities
Limited English Proficient Students
African-American Students
American Indian/Alaskan Native Students
Asian Students
Hispanic or Latino Students
Native Hawaiian /Pacific Islander Students
White Students
Or as otherwise may be required by federal law.

2550 Small School Review

The Commissioner shall conduct a review of additional student achievement results in small schools. The Operations Manual shall describe schools' eligibility for the reviews, the review process and how AYP determinations are made.

2555 Accountability Reports

The Commissioner shall provide accountability reports on all elements of the AYP determination and the accountability status to each school and LEA.

The Commissioner shall annually issue a public report of accountability results. The report shall include the accountability results of every public school and LEA for the applicable elements of the AYP decision.

To ensure the confidentiality of individual students' results, public reporting of any assessment or accountability result shall require a minimum of 11 students. In no case shall results be reported when personally identifiable information would be revealed or if released information could lead to identification. All public reporting shall comply with the Family and Education Rights and Privacy Act, 20 U.S.C. §1232g, 34 CFR §99.1 et seq.

The AYP report shall include the AYP determination for all groups in each school and LEA on: the Mathematics Achievement Index, the ELA Achievement Index, the Academic Indicator applicable to the grade span of the school or LEA and the Participation Rate. In addition, the identification status, including the number of years identified for improvement and the level of consequences, of each school and LEA, shall also be reported.

2560 Identification of Schools and LEAs Not Making AYP for Two Consecutive Years

Except as may be necessary to conduct Small School Reviews, a school or LEA shall be identified for school improvement if the All Student Group or any other group of statistically reliable size does not make AYP for two consecutive years in the same Achievement Index or in the Participation Rate. For the All Student Group, the school or LEA shall also be identified if the Academic Indicator criterion is not met for two consecutive years. All other AYP groups of statistically reliable size must also meet the Academic Indicator if AYP is met through "safe harbor" calculation or the one-year exceptional growth calculation.

2565 Required Actions for Identified Schools and LEAs

The Commissioner shall send written notification of the actions that the school or LEA is required to institute to address those areas that caused the identification.

2568 Appeal of Identification and/or Required Actions

To appeal the Commissioner's determination that a school or LEA has not met AYP or has been identified for improvement or other consequences, the school board chair shall submit a written request to the State Board within 45 calendar days of receiving notification thereof. Proceedings before the Board shall be governed by State Board Rule 1230. A school board aggrieved by an order of the State Board may appeal in accord with the Vermont Rules of Civil Procedure.

2570 Exiting Identification after Two Consecutive Years of Making AYP

Any school or LEA that meets AYP for two consecutive years, in the element(s) on which they were identified, shall exit formal identification status.

2575 Commissioner's Recommendations to the State Board for Schools or LEAs Not Making AYP for the Fourth Consecutive Time

If the school or LEA does not make AYP for the fourth consecutive year in the relevant elements, the Commissioner shall recommend to the State Board actions consistent with state and federal law.

2575.1 State Board Action on Commissioner's Recommendations and Appeal of State Board Decision

After the opportunity for hearing, the State Board shall order that one or more of the actions consistent with state and federal law be taken. The action ordered by the State Board shall be the least intrusive, consistent with the need to provide students attending the school or in the LEA with substantially equal educational opportunities.

A school board aggrieved by an order of the State Board may appeal in accord with the Vermont Rules of Civil Procedure.

2580 School and LEA Public Recognition

Any school or LEA that either closes the achievement gap between AYP groups for two or more consecutive years in a statistically significant way or exceeds their adequate yearly progress for two or more years shall receive public recognition by the State Board.

The criteria and process for such recognition shall be included in the Operations Manual.

2585 Effective Date

These rules shall be effective on September 1, 2004.

2600 PREKINDERGARTEN EDUCATION Effective: July 5, 2008

Selected Definitional Sections and Statutory Authority

See 16 V.S.A. § 11(a)(31) for the definition of "prekindergarten education." See also 16 V.S.A. § 11(a)(6) for the definition of "kindergarten," 16 V.S.A. § 1073(a) for the definition of "legal pupil," and 16 V.S.A. § 1121 regarding mandatory attendance by school-age children.

2601 Statement of Purpose and Applicability

The purpose of prekindergarten education is to provide young children with opportunities to reach their full growth and developmental potential. These rules establish standards for prekindergarten education which may be offered by local school districts in accordance with 16 V.S.A. § 829. Nothing herein shall be construed as mandating the establishment, continuation or expansion of prekindergarten education by a school district, or as creating an entitlement to prekindergarten education.

2602 Definitions

The following definitions shall apply to terminology which is used throughout these rules:

(1) **Average Daily Membership (ADM).** Average daily membership is defined in accordance with 16 V.S.A. § 4001(1);

(2) **Developmentally Appropriate.** Developmentally appropriate describes practices which are based upon principles of how children develop and learn, as articulated by the National Association for the Education of Young Children (NAEYC); these practices are responsive to each child's individual strengths, interests and needs, and are aligned with Vermont's early learning standards;

(3) **Effective and Efficient.** A prekindergarten education program that operates effectively and efficiently is one that meets the needs of children and families, produces measured and evidenced outcomes for children in accordance with the Vermont Early Learning Standards, minimizes transitions for children, and does not exceed what it would cost the school district to operate a comparable program;

(4) **Essential Early Education.** Essential early education (EEE) means special education services and supports which are provided pursuant to Part B of the Individuals with Disabilities Education Act, and in accordance with 16 V.S.A., Chapter 101;

(5) **Full-time Equivalent for Prekindergarten.** A full-time equivalent for prekindergarten is defined as ten hours of prekindergarten education per week. If a child is enrolled in prekindergarten education for between six and ten hours per week, the child is counted as a percentage of one full-time equivalent. A child who is enrolled in prekindergarten education for fewer than six hours per week shall not be included in the district's ADM unless the child is in EEE;

(6) **National Accreditation.** National accreditation means accreditation by the National Association for the Education of Young Children;

(7) **Parental Participation.** Parental participation in a prekindergarten education program means the opportunity for parents and guardians to be actively involved in the program, and may include involvement in program development, policy work, program evaluation, curriculum development, and helping in the class;

(8) **Prekindergarten Child.** Prekindergarten child means:

(a) A three or four year old child who is enrolled in a prekindergarten education program;

(b) A child who is receiving essential early education pursuant to 16 V.S.A. § 2965; or

(c) A five year old child who is enrolled in a prekindergarten education program, and who is not yet eligible for, or who is not enrolled in, kindergarten;

(9) **Prekindergarten Education.** Prekindergarten education means services designed to provide developmentally appropriate early development and learning experiences that are based on Vermont's early learning standards to children who are three and four years of age, and to five year old children who are not eligible for, or enrolled in, kindergarten;

(10) **Program Expansion.** Program expansion is when a school district seeks to increase the number of children included in its ADM count and such an increase would require additional contracts, personnel, and/or classrooms;

(11) **Qualified Prekindergarten Education Program.** A qualified prekindergarten education program means a program or provider of prekindergarten education which satisfies the educator licensing and program quality standards specified in Sections 2606 and 2607 of these rules;

(12) **School District.** School district is defined in accordance with 16 V.S.A. § (11)(a)(10);

(13) **Step Ahead Recognition System (STARS).** The Step Ahead Recognition System is the department for children and families' graduated quality rating system for early childhood programs, based upon that department's program quality standards;

(14) **Vermont Early Learning Standards (VELS).** The Vermont early learning standards are state-recognized performance standards and learning outcomes for three and four year old children.

2603 Establishing or Expanding Prekindergarten Education

(1) Prior to a school district's establishment or expansion of prekindergarten education, the school district shall engage the community in a collaborative process in order to assess:

(a) The need for, and the level of support for, prekindergarten education within the community;

(b) The estimated number of three and four year old children in the community, and the types and locations of early care and education programs that currently serve these children; and

(c) An inventory of all existing local early care and education providers which meet, or have the potential to meet, the quality standards set forth in Sections 2606 and 2607 of these rules;

(2) The collaborative assessment process shall include parents, existing early child care and education providers, representatives of the regional early childhood council, and other community members;

(3) The commissioner of education and the commissioner of the department for children and families shall jointly develop and publish advisory guidelines which school districts and communities can use to conduct needs assessments and inventories of existing service providers;

(4) Results of the school district's needs assessment and inventory of all existing service providers shall be used in the development of any proposal to establish or expand prekindergarten education. The proposal shall indicate whether prekindergarten education will be provided through contracting with existing qualified private providers, through operating a public school prekindergarten program, or both;

(5) If a school district begins or expands prekindergarten education, the district shall use existing qualified private providers to the extent that existing qualified private providers have the interest to participate and have the capacity to meet the district's needs effectively and efficiently;

(6) A school district, after conducting the required collaborative community process, may limit the number or ages of children who are to be enrolled in the prekindergarten education program, in order not to exceed the number of children who may be included in its average daily membership as limited by the provisions of 16 V.S.A. § 4001(1)(C)(ii);

(7) A school district may choose to go beyond the cap established in 16 V.S.A. § 4001(1)(C)(ii), and in so doing, may offer prekindergarten education to children who will not be eligible to be included in its average daily membership;

(8) When a school board includes in its approved budget funds to provide prekindergarten education, and when the number of resident prekindergarten children who apply for prekindergarten education exceeds either the capacity and/or the number of prekindergarten children who may be included in the district's ADM, the school board shall design and implement a nondiscriminatory method of determining who will be enrolled and/or who will be included in the district's ADM. A school district that offers prekindergarten education by contracting with private providers shall consult with those private providers in developing the nondiscriminatory method. Districts which use federal and/or state funds or grants to support prekindergarten education, and those funds target specific populations, may prioritize serving those children in order to fulfill their grant obligations;

(9) A prekindergarten child who is included in the district's ADM as a three-year-old shall automatically be eligible to be included in the district's ADM as a four-year-old, as long as the child remains a resident of the district; and

(10) The school district shall publicize the availability of prekindergarten education programs in a manner which is designed to adequately inform parents of their nature and availability.

2604 Contracting with Existing Qualified Prekindergarten Programs

(1) School districts that provide prekindergarten education by entering into contracts with existing qualified providers shall enter into written contracts which, at a minimum, shall include the following provisions:

(a) That the qualified provider shall:

(1) Maintain its status as a qualified prekindergarten education program in accordance with Sections 2606 and 2607 of these rules, and report any change in this status, including alleged or proven violations of program licensure or registration requirements, to the school district, within five days of such accusation or finding;

(2) Adhere to federal and state laws on non-discrimination which apply to private providers;

(3) Provide a developmentally appropriate curriculum which is aligned with Vermont's early learning standards;

(4) Provide prekindergarten education for a minimum of 35 weeks per academic year;

(5) Conduct child development assessments of each child enrolled for at least fours hours per week, using one or more instruments approved by the department of education and the department for children and families, at least two times per year, and report the results to the school district by June 30;

(6) Provide parents with a report of their children's developmental progress at least two times per year, and offer parents at least two opportunities per year to meet with the teacher;

(7) Describe and provide opportunities for parental participation;

(8) Permit on-site visits, announced or unannounced, by school district staff and by representatives of the department of education and the department for children and families;

(9) Participate in training which may be required for the purpose of fulfilling the provider's contractual obligations;

(10) Maintain appropriate liability insurance coverage;

(11) Complete reports for enrollment, attendance, child assessment, actual costs of prekindergarten education, finances and other areas, as required by state law, the department of education, and the school district; and

(12) With respect to essential early education students who are enrolled in the prekindergarten education program, comply with all requirements of state and federal laws governing essential early education;

(b) Establish payment provisions according to the following:

(1) Use the template provided by the department of education and the department for children and families to establish the actual costs of operating the prekindergarten education program;

(2) The actual cost shall serve as the basis for contract negotiations between the district and any qualified private provider which proposes to provide prekindergarten education on behalf of the district;

(3) The school district will pay the negotiated cost of providing the agreed upon services for up to 10 hours per week; part of the negotiated cost may include the school district's provision of a licensed teacher, and

(4) Providers may not charge parents for services paid for by the school district. Providers may charge parents up to the difference between the actual cost of the contracted services and the amount paid for those services by the district. No district shall count any child in its ADM unless it is directly providing, or contractually paying to provide, at least six hours of prekindergarten services for that child unless the child receives EEE services.

(2) A parent or guardian residing in a school district which provides prekindergarten education may request in writing that the school district enter into a contract with a qualified prekindergarten education program within or outside of the district. The school district shall consider the request, and shall submit its determination and rationale, in writing, to the parent or guardian, within 30 days of receiving the request;

(3) A private provider that meets the program quality standards and requisite staff qualifications which are specified in Sections 2606 and 2607 of these rules, may submit a written request to a school district that provides prekindergarten education for the purpose of entering into a contract to provide a prekindergarten education program, if the provider is located within the school district. The school district shall consider any such request, and shall submit its determination and rationale, in writing, to the provider, within 30 days of receiving the request. If denied, a provider may re-apply for the next academic year; and

(4) A private provider that meets the program quality standards and requisite staff qualifications set forth in Sections 2606 and 2607, and which is located outside of a school district that provides prekindergarten education, may submit a written request to such a school district that it be permitted to enter into a contract to provide a prekindergarten education program for one or more of the district's resident children. Such provider shall include in its written request evidence that prekindergarten children who reside in such school district currently attend, or wish to attend, the provider's program. The school district shall consider any such request and shall submit its determination and rationale, in writing, to the provider, within 30 days of receiving the request. If denied, a provider may re-apply for the next academic year.

2605 Districts Operating Prekindergarten Education Programs

(1) Subject to the requirements of Rules 2603(5) and 2608(3), a school district may also provide prekindergarten education by establishing and operating a program either within a public school, or through a facility which is not physically part of a public school. All such district-operated prekindergarten education programs, regardless of where they are physically located, shall be licensed through the department for children and families, and shall be in good regulatory standing; and

(2) Any district-operated prekindergarten education program shall:

(a) Maintain its status as a qualified prekindergarten program in accordance with Sections 2606 and 2607 of these rules, and shall report any change in this status, including alleged or proven violations of program licensure or other requirements, to the department of education, within five days of such change;

(b) Adhere to federal and state laws regarding non-discrimination;

(c) Provide a developmentally appropriate curriculum which is aligned with Vermont's early learning standards;

(d) Provide prekindergarten education for a minimum of thirty-five (35) weeks per academic year;

(e) Conduct child development assessments of each child enrolled for at least four hours per week, using one or more instruments approved by the department of education, at least two times a year, and report the results of those assessments to the department of education by July 30;

(f) Provide parents with a report of their children's developmental progress at least twice per year, and offer parents at least two opportunities per year to meet with the teacher;

(g) Describe and provide opportunities for parental participation;

(h) Permit on-site visits, announced and unannounced, by representatives from the department of education and the department for children and families;

(i) Complete reports for enrollment, attendance, child assessment, costs of prekindergarten education, finances and other areas as required by state law and the department of education; and

(j) Comply with all requirements of any applicable state and federal laws governing essential early education.

2606 Qualified Prekindergarten Education Programs

(1) Only children enrolled in qualified prekindergarten education programs shall be included in a school district's ADM count. A prekindergarten education program shall be considered qualified only if it meets all of the following criteria:

(a) The program receives and maintains at least one of the following quality program recognition standards:

(1) National accreditation through the National Association for the Education of Young Children (NAEYC);

(2) A minimum of four stars in Vermont's Step Ahead Recognition System (STARS), with at least two points in each of the five arenas; or

(3) Three stars in the STARS system if the program has a plan approved by the commissioner for children and families and the commissioner of education to achieve four or more stars within three years, including at least two points in each of the five arenas, and if the program has met intermediate steps;

(b) The program is currently licensed or registered, as applicable, by the department for children and families, and is in good regulatory standing;

(c) The program's curricula are aligned with the Vermont early learning standards;

(d) The program provides opportunities for parental involvement and participation. These opportunities may include involvement in program development, policy work, program evaluation, curriculum development, and helping in the class; and

(e) Program staff meet the professional standards described in Section 2607 of these rules.

2607 Staff Qualifications

In addition to meeting all the applicable early childhood program licensing regulations of the department for children and families, qualified prekindergarten education programs shall meet the following staff qualifications:

(1) Teachers in district-operated prekindergarten education programs shall be licensed with an endorsement in either early childhood education or early childhood special education;

(2) Each contracted licensed center shall employ, or contract for the services of, at least one teacher who is licensed and endorsed in either early childhood education or early childhood special education;

(3) The operator of each registered home shall either be a teacher who is licensed and endorsed in early childhood education or early childhood special education, or shall employ or contract for the services of at least one teacher who is licensed and endorsed in either early childhood education or early childhood special education, or in the alternative, shall receive regular, hands-on active training and supervision from a teacher who is licensed and endorsed in either early childhood education or early childhood special education. Under this last arrangement, the regular, active training and supervision shall occur at least three hours per week, and during each of the 35 weeks per year in which ADM-counted children are enrolled. The registered home shall maintain appropriate written documentation of the supervision on location; and

(4) Nothing in these rules shall be construed as restricting the ability of a district or a private provider from filling a staff position with an individual who holds a provisional or emergency license. Under such circumstances, however, the district, the private provider, and the holder of the provisional or emergency license, shall meet all of the terms and conditions of VSBPE Rules 5350-5364 and their successor rules. When a private provider is unable to employ a licensed educator for the purpose of becoming a qualified private provider, a superintendent may, on behalf of the requesting private provider, and pursuant to the terms and conditions of VSBPE Rules 5350-5364 and their successor rules, apply to the department of education for a provisional or emergency license for one or more individual(s) whom the qualified private provider wishes to have provide prekindergarten program services under these rules. Under such circumstances, the superintendent shall monitor the progress and completion of the required two year plan for obtaining a Level I license. The mere act of a superintendent applying, on behalf of a qualified

private provider, for a provisional or emergency license, shall not obligate the district to contract with that (or any other) qualified private provider.

2608 Reporting the Costs of Prekindergarten Education

(1) To ensure transparency and accountability for prekindergarten education costs, school districts shall submit financial reports on forms provided by the commissioner of education, detailing their costs for prekindergarten education on an annual basis, and in accordance with the following provisions:

(a) Providers under contract with a school district shall report to the contracting district all allowable prekindergarten education costs as specified in their contracts, on forms provided by the commissioner of education; and

(b) School districts shall compile the financial reports from all of their contracted prekindergarten education programs, and shall report those costs to the commissioner of education on or before August 1 of every year;

(2) School districts shall report their expenditures for both contracted and district-operated prekindergarten education programs and for essential early education, by source of funds (e.g., education fund, state grant, federal funds), to the commissioner of education, on or before August 1 of every year; and

(3) School districts shall specify the identifiable costs for prekindergarten education and essential early education services in their annual budgets, and in their annual reports to the community.

2609 Reporting on the Effects of Prekindergarten Education

(1) Each school district shall provide annual data on the progress of all of its children who are both: (a) attending a prekindergarten education program for four or more hours; and (b) included in its average daily membership, to the commissioner of education;

(2) The school district shall, after consultation with its own and contracted prekindergarten education providers, select one or more assessment instruments from the state-approved list in order to measure its prekindergarten children's level of development during the beginning of the year and again during the last weeks of the program on an annual basis; and

(3) Each school district shall compile and report the results of the assessments which are to be conducted hereunder, and shall do so in accordance with the guidance which shall be provided by the commissioner of education and the commissioner for children and families.

2610 Grounds for Administrative Appeal Regarding a School District's Prekindergarten Education Program

The following actions of a school district may be made the subject of an administrative appeal:

(1) A parent or guardian of a prekindergarten child, or an existing provider, may appeal a district's determination regarding whether an existing provider meets the standards set forth in Rule 2606 or Rule 2607;

(2) A parent or guardian of a three or four year old child, or of a five year old child not yet eligible for or enrolled in kindergarten or, a potential qualified provider, may appeal a district's proposed plan to establish or expand prekindergarten education, on the grounds that the plan was formulated in violation of these rules;

(3) A parent or guardian of a prekindergarten child, or a qualified provider, may appeal a district's rejection of a request pursuant to Rule 2604(2), (3) or (4) or its compliance with the requirements of Rule 2603, on the grounds that the district did not conform to the procedural requirements of an applicable statute or rule;

(4) Appeals shall be filed in writing by the appellant with both commissioners, within 30 calendar days of the alleged violation which gives rise to the appeal. Written appeals must contain a description of the facts upon which the appellant relies and an explanation of why the appellant believes that the district's actions violated the requirements of the statute or rule. The appellant shall also provide copies of the written appeal to all parties within the time limits allowed by these rules;

(5) For purposes of appeals under this rule, party status shall be limited to the appellant(s) and the school district. The school district shall have 30 calendar days from receipt of the appellant's submission to respond in writing to the submission, and shall provide copies of its response to all parties;

(6) Appeals shall be considered jointly by the commissioners of education and children and families or their counsels. The commissioners may request additional written submissions from one or both of the parties, and under such circumstances, copies of both the request(s) and the response(s) shall be sent to all parties by the commissioners. The commissioners, in their discretion, may hold a hearing, either at the request of one or more of the parties, or on their own initiative;

(7) The burden of proof shall be on the appellant. The standard of review shall be by a preponderance of the evidence; and

(8) The commissioners shall jointly issue a written decision within 30 calendar days of the close of the record, and the commissioners' decision shall be final.

2611 Effective Date

These rules shall become effective on July 1, 2008. School districts that have been providing prekindergarten education either through contracts with private providers and/or district-operated programs and including prekindergarten children in their ADM count prior to the effective date of these rules, shall have until July 1, 2009 to comply with sections 2604 (1)(b), 2606(1)(a), and 2609 of the rules.

2612 Repeal 9200.4

Repeal State Board of Education rule 9200.4 on calculating the Full-time Equivalent of Essential Early Education/Prekindergarten Pupils.

3000 SCHOOL DISTRICT ORGANIZATION 2/9/06

3100 Statement of Purpose

The State Board of Education firmly believes that the school districts of Vermont should be organized so as to provide the maximum educational opportunities for pupils in grades K-12 or 1-12 consistent with administrative and financial effectiveness and efficiency.

3200 Supervisory Unions

3210 Statutory Authority: 16 VSA §261, 16 VSA §262, 16, VSA §§263-266, 16 VSA §267, 16 VSA §§301-303, 16 VSA §§321-325

3220 Supervisory Union Adjustments

3221 Procedure

3221.1 Adjustments may be requested by a member district(s), or initiated by the State Board of Education.

3221.2 A school district may petition following a vote, complying with 16 VSA §261(b), in favor of adjustment.

3221.3 Following a request to adjust, the petitioning district shall conduct a needs assessment which should indicate what educational services are presently provided and what educational services would be provided under the proposed adjustment.

3221.4 The needs assessment will be conducted by the state Department of Education if the State Board of Education initiates the request.

The Department of Education shall obtain a response from affected school districts.

3221.5 The State Board of Education will consider action on a request following receipt of the above information.

3221.6 In no case will adjustments occur within supervisory unions until July 1 following the annual supervisory union meeting following State Board of Education action.

3222 Agreement

School districts involved in a supervisory union adjustment must agree to the following:

3222.1 To maintain a K-12 or 1-12 educational continuum to the extent practicable.

3222.2 That all existing programs or equivalent services currently provided through local financial effort shall continue to be provided in all districts affected for a minimum of three (3) years from the effective date of the adjustment.

3222.3 The Department of Education shall report to the State Board of Education as to district agreement on and compliance with the conditions. Failure to comply could result in a reversion to the original organizational pattern.

3223 Needs Assessment

Supervisory unions shall be organized to the extent practicable to offer a comprehensive program of instruction in kindergarten or grade one through twelve which meets the needs of children. Factors to be considered in the needs assessment shall include the educational programs and services to meet the needs of regular and exceptional children and support services and programs.

Needs assessments shall be conducted according to procedures developed by the Department of Education.

3223.1 The supervisory union shall provide educational and administrative leadership and supervision at a reasonable cost consistent with local taxable wealth and state and federal financial support.

3223.2 A supervisory union shall be a contiguous geographic unit with consideration given to whether there are community characteristics that will assist in deciding its boundary.

3230 Vacancy of Superintendency

3231 Notification

The chair of a supervisory union/district board shall notify the Commissioner of Education as soon as the board becomes aware of an impending vacancy in the superintendency of the supervisory union/district.

3232 Recruitment Initiated

Within two calendar weeks of notification by the supervisory union/district board chair the Commissioner shall advise the chair that either of the following applies:

3232.1 The process of recruiting a new superintendent may proceed, or

3232.2 The Commissioner will recommend to the state board that the supervisory union/district be placed under state board consideration for supervisory union change. The Commissioner may authorize the recruitment for and hiring of an interim superintendent for a specified time period if necessary to fill a vacancy. However, the supervisory union/district board may not hire a permanent superintendent until the state board has completed its deliberations regarding changes if any, in the supervisory union/district.

3240 Superintendent

3241 Qualifications. A superintendent shall be certified in accordance with state law (See Section 5000 of this manual).

3250 Fiscal Operations

3250.1 Accounting

Accounting systems will meet governmental generally accepted accounting principles for state and local governments and will follow, at a minimum, the code structure contained in the Handbook for Financial Accounting of Vermont School Systems. Financial Code Classification System (16 VSA 164 (15)).

3250.2 Receipt of Grant Funds

To receive grant federal or state funds, entities must:

(a) have the approval of the governing board,

(b) be an eligible recipient under the applicable state and/or federal regulations,

(c) file an application form with the Department of Education,

(d) meet reporting requirements as to forms and timelines,

(e) have the chief administrative officer sign all forms,

(f) expend funds within state and/or federal grant regulations,

(g) meet all state and federal audit requirements, and

(h) return any funds cited as expenditures/revenues not meeting program regulations (16 VSA 164 (15)).

3250.3 Employment of Personnel

Each supervisory union shall employ or contract with a person(s) qualified by education and/or experience to maintain the accounting system on a double entry accrual or modified accrual basis in accordance with governmental generally accepted accounting principles (16 VSA 261a (7)).

3260 Definition of Enrolled Pupils

3260.1 For the purpose of calculating a member school district's proportionate share of the superintendent's salary and expenses and the other expenses of the supervisory union pursuant to 16 VSA 301, unless otherwise agreed upon, the term "enrolled pupil" means that actual number of students enrolled in the school as of the 40th day of school.

Special and vocational education pupils shall be counted for the purposes of calculation proportionate share in the same manner as set forth above.

3300 Australian Ballot Budget Votes Under Act 60

Australian ballot budget articles pursuant to 16 VSA §§428(a), 511(a) and 711a(a) shall substantially conform to the following:

“Shall the voters of the _____ (town) (incorporated) (union)

school district appropriate $_____ necessary for the

support of its schools for the year beginning July 1, _____?"

Effective 2/19/04

4000 Unsafe School Choice Option Policy

(a) Unsafe school choice - Each local education agency shall ensure that any student who either attends a persistently dangerous public elementary or secondary school, or is a victim of a violent criminal offense that occurred in or on the grounds of a public elementary or secondary school that the student attends, shall be allowed to attend a safe public school at the same grade level within that local education agency. For purposes of this section, a "safe public school" shall mean a public school that has not been designated by the Department of Education as a persistently dangerous public elementary or secondary school.

(b) Persistently dangerous school – Each local education agency shall, by June 1, furnish data requested by the Commissioner on whether its schools are persistently dangerous. If data becomes available after June 1, but before June 30, the report shall be amended by the local education agency. The Commissioner shall determine by June 30 whether and which schools are persistently dangerous. A school shall be designated as persistently dangerous if all of the criteria in (1) – (3) below are met for each of the immediately prior three school years:

(1) 3% or more of the student enrollment or, with respect to a school with a student enrollment of less than a hundred, at least three students, have been expelled for violence-related incidents that occurred in or on the grounds of the school;

(2) One or more students have been expelled for possessing a weapon in or on the grounds of the school. For purposes of this section "weapon" means a dangerous or deadly weapon within the meaning of 13 V.S.A. §4016(a)(2); and

(3) 3% or more of the student enrollment or, with respect to schools with a student enrollment of less than a hundred, at least three students, have been determined to be victims of violent criminal offenses and have exercised the school choice option described in subsection (a), above. This criterion is inapplicable with respect to any school year prior to July 1, 2003.

(c) Duration of designation – A school that has been designated as being persistently dangerous shall continue to be so designated until such time as two consecutive school years have passed in which the school has met less than all of the criteria set forth in subsections (b)(1) - (3), above.

(d) Victims of violent criminal offenses – When a student seeks to exercise school choice as the victim of a violent criminal offense, the principal shall determine whether that student is the victim of a violent criminal offense that occurred in or on the grounds of the school that the student attends. Such principal shall, prior to making any such determination, consult with any law enforcement agency investigating such alleged violent criminal offense and consider any reports or records provided by such agency. The principal may conclude that a student has been a victim of a violent criminal offense where either: (1) the perpetrator has admitted the violent conduct, or (2) the evidence against the perpetrator allows for no

reasonable doubt that he or she committed the offense. The determination of the principal may be appealed by or on behalf of a student claiming to be the victim of a violent offense to the superintendent, and then to the school board for the district. For purposes of this section, "violent criminal offense" shall mean any simple assault as defined in 13 V.S.A. §1023 that results in bodily injury, or any crime listed under 13 V.S.A. §5301(7)(A)-(I), (M), (N) & (P)-(T).

(e) Transfer - Any student who transfers to a safe public school pursuant to subsection (a), above, shall be enrolled in the classes and other activities of the public school to which such student transfers in the same manner as all other children at that public school.

(f) Notification - Each local education agency that is required to provide school choice pursuant to the provisions of this section shall promptly notify parents of, or persons in parental relation to students: (1) attending schools that have been designated as persistently dangerous, or (2) who are victims of violent criminal offenses of their right to transfer to a safe public school within the local education agency, and of the procedures for such transfer. Nothing in this section shall be construed to require such notification if there are no other public schools within the local education agency at the same grade level.

(g) Duration of unsafe school choice – Any student who transfers to a safe public school pursuant to subsection (a), above, shall be permitted to remain in such safe public school until the end of the last grade-level offered at the school from which he or she transferred.

(h) Designating a safe public school - When a school has been designated as a persistently dangerous public elementary or secondary school, or when a student has been the victim of a violent criminal offense that occurred in or on the grounds of a public elementary or secondary school that the student attends, it shall be the responsibility of the local education agency, after consultation with the student's parents, based on objective criteria, to designate a safe public school or schools within the local education agency to which the student(s) may transfer. Nothing in this subdivision shall be construed to require a local education agency to designate a safe public school if there are no other public schools within the local education agency at the same grade level.

(i) Transportation - Consistent with the criteria of its transportation policy, the local education agency shall provide transportation for any student permitted to transfer to the safe public school within the local education agency it has designated pursuant to subdivision (h) of this section.

(j) Definition of local education agency – For purposes of this section, "local education agency" shall mean a school district, as defined in 16 V.S.A. §11(a)(10).

August 29, 2003

4100 STUDENT SAFETY

4100 Statutory Authority

The Vermont Statutes Annotated addresses the areas of school attendance, truancy, discipline, punishment, health, safety, and transportation. Refer to the statutes for specific laws.

The subject of "student records" is addressed elsewhere in this manual. [Editor's Note: See Rule 2120.8.3.3]

4101 Every school district receiving federal and/or state funds for program support will develop a program of safety, institute that safety program, and monitor it to make sure it is kept current.

4102 Superintendents and school boards shall develop a comprehensive emergency plan for each school that will be updated and tested annually and a functional emergency organization.

The plan shall include provision of such disasters as fire, smoke, tornado, nuclear disaster, snow, blizzard, ice, flood, earthquake, bomb threat, civil disturbance, bus accidents and other emergencies.

4200 Alcohol and Drugs

4210 Statutory Authority: 16 VSA §1165

4211 Definition

Alcohol and drug abuse (substance abuse) shall be defined as: "the ingestion of a substance in such a way that it interferes with a person's ability to perform physically, intellectually, emotionally or socially." Vermont Office of Alcohol and Drug Abuse Programs.

4212 Policy Requirements

School districts shall adopt an alcohol and drug abuse policy which shall contain the following:

4212.1 Statement of Philosophy.
This policy shall be concerned with the health and well being of all students and the policy shall take into consideration the individual needs of students with problems as well as the right of the majority of students to an education.

4212.2 Education Program.

The policy shall define an educational program consistent with the Vermont Alcohol and Drug Education Curriculum Plan

4212.3 Support and Referral Systems and Cooperative Agreements.
The policy shall provide for a support and referral system for students in distress due to their own or another's use of alcohol or other drugs. Such a system shall include both a clearly defined in-school process for initial assessment, support, and if necessary, referral to community resources of such students, and a written referral agreement with at least one community substance abuse treatment provider approved by the Office of Alcohol and Drug Abuse Programs. Such an agreement should define the process for making an effective referral and the nature and extent of information to be provided during and after such a referral to all parties involved.

4212.3A Immediate Procedures
The policy shall provide for the handling of any alcohol/drug related incident until the student has been discharged to the parent, guardian, social service, medical or law enforcement agency.

4212.3B Emergency
The school district policy shall establish procedures for administering emergency first aid related to alcohol and drug abuse. The procedures will define the roles of the personnel involved.

4212.3C Possession, distribution, etc.
The school shall have a procedure that requires the administration to be immediately informed by a school staff member of any violation of the law, including illegal possession or distribution of drugs or alcohol. The administration shall follow the appropriate legal procedures and due process of law for discipline.

4212.3D Performance and Behavior Related Problems
School district policy shall designate staff available for consultation with a student whose behavior or performance may indicate a problem with alcohol or drug abuse. This staff will determine the need for further screening, education, counseling, or referral for treatment.

4213 Procedures for education

4213.1 Schools shall develop a sequential K-12 alcohol and drug abuse prevention education curriculum as defined in Vermont State Alcohol and Drug Education Curriculum Plan and in Health Education and Traffic Safety and Driver Education requirements of the Standards for Approving Vermont's Public Schools.

4213.2 Schools shall provide for training of school staff such that teachers and health and guidance personnel have a sufficient level of professional development to enable them to competently teach or provide other services required in the school's alcohol and drug abuse prevention education program. A minimum training program should be directed toward the following areas:

Pharmacology
Chemical Use, Abuse, and Dependence
Chemical Dependence and the Family
Societal and Personal Attitudes
Policy and Legal Issues
Support and referral Systems for Students in Distress
Curriculum Development, Methods, and Classroom Issues
School Climate
Drinking and Driving

In addition there shall be an orientation for the entire school community on the program, its intent, and alcohol and drug issues in general.

4214 Community Involvement
Schools shall provide for a program to inform the community about the school's alcohol and drug prevention education program, alcohol and drug abuse prevention issues, and community-wide responsibility for effective alcohol and drug abuse prevention.

4215 Annual Report
Schools shall submit an annual report, due to the Commissioner of Education by July 1 of each year, which includes a description of the school's alcohol and drug abuse prevention program, the apparent effectiveness of the program, an evaluation of the curriculum, and an assessment of the problems of alcohol and drug abuse within the school district. This report shall use the standard format provided by the Department of Education.

4220 Prescription Drugs

4221 Statement of Purpose
Many children are able to attend regular school because of the effective use of medication in the treatment of chronic disabilities or illnesses. When possible medication shall be administered in the home. However, any student who is required to take medication during the regular school days must comply with the school regulations, which shall require the following.

4222 Procedures
The school shall assure that the following are provided:

4222.1 Written orders from a physician detailing the name of the drug, dosage, time interval the medication is to be taken, diagnosis, and reason for giving.

4222.2 Written permission from the parent or guardian requesting that the school district comply with the physician's order.

4222.3 Medication brought to school in a container appropriately labeled by the pharmacy or physician.

4222.4 A locked cabinet for storage of medications.

4222.5 Opportunities for communication with the pupil, parent, and physician regarding the efficacy of the medication administered during school hours.

4300 Disciplinary Action

4310 Statutory Authority 16 VSA §1162

4311 Procedures
When a student is subject to disciplinary action, the school district shall afford the student due process procedures as follows:

4311.1 In all cases of short-term suspension from school, which is generally regarded as 10 days or less, the student and his or her parent/guardian shall be given an opportunity for an informal hearing before an appropriately designated school official. Except for cases set forth in paragraph 4311.3, the hearing must precede the suspension and the district shall provide:

(1) notice of the charges;

(2) explanation of the evidence against the student;

(3) opportunity for the student to tell his or her side of the story; and

(4) decision in writing to the parent/guardian.

4311.2 In cases of a long term suspension which is generally more than 10 days unless a school district establishes a shorter period, or an expulsion, the student and his or her parent/guardian shall be given an opportunity for a formal hearing before the school board and the district shall provide:

(1) written notice of the following:

(a) nature of charges against the student;

(b) date, time and place of hearing;

(c) right to legal representation;

(d) possible penalties involved;

(2) opportunity to present evidence;

(3) opportunity to cross-examine witnesses; and

(4) decision in writing to parent/guardian

4311.3 (1) When a student, because of his or her conduct or condition, is an immediate threat to himself or herself, others, property or educational environment, the school district may take whatever action is appropriate under the circumstances, including, but not limited to, immediate suspension pending a hearing as soon as possible thereafter. In addition, in cases where a student brings a weapon (as defined in the federal Gun-Free School Act) to school, the school district must refer the student to a law enforcement agency and expel the student for a period of not less than one calendar year unless such expulsion is modified in accordance with the provision of 16 VSA §1166(b)(2) in circumstances such as but not limited to:

(a) the student is unaware that he or she has brought a weapon to school,

(b) the student did not intend to use the weapon to threaten or endanger others,

(c) the student is disabled and the misconduct is related to the disability,

(d) the student does not present an ongoing threat to others and a lengthy expulsion would not serve the best interest of the student.

(2) In situations where a student with a disability brings a weapon to school, the provisions of regulation 4312(2) shall apply. In any such situation, an opportunity for a hearing prior to an expulsion must be provided prior to the expulsion, pursuant to 16 VSA §1166(b)(2)

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 CFR §104 et seq.)

In addition to the general disciplinary procedures found within Rule 4311, and in accordance with 34 CFR §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 CFR §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 2360.2(d)(1) unless the following procedures have been completed:

(a) A re-evaluation as defined by 34 CFR §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 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 2360.2(d)(1), 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 4313.9(a), to school or at a school function, he or she may be placed in an interim alternative educational setting (IAES) in accordance with the procedures set forth in Rule 4313.9 and Rule 1253. The student's 504 team shall determine the IAES, and the services provided in the IAES, in accordance with the procedures set forth in Rule 4313.9. 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 a school district, the parent may request an impartial due process hearing, and the procedures in Rules 2365.1.6(c) 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. Department 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 school district 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 school district 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 to Order Short-term Removals

Except as set forth in Rules 4313.5(a), 4313.8 and 4313.9, or as otherwise provided by law:

(a) To the extent a removal would be applied to a child who was not eligible for special education services, an eligible child may be removed from the educational setting by the school principal with the agreement of the special education administrator (who can be the case manager) for not more than ten consecutive school days for any violation of school rules.

(b) During the same school year, additional removals of not more than ten consecutive school days each may be ordered for separate incidents of misconduct, so long as those removals do not constitute a change of placement, as defined in Rule 4313.2.

4313.2 Change of Placement

For purposes of Rules 4313.1 to 4313.13:

(a) A “change of placement” occurs if a child’s removal from his or her current educational placement for disciplinary reasons is for more than ten consecutive school days.

(b) A "change of placement" occurs if the child is subjected to a series of removals that:

(1) Add up to more than ten school days in a school year, and

(2) Constitute a pattern based upon such factors as:

(i) The length of each removal, the total amount of time the child is removed;

(ii) The proximity of the removals to one another; and

(iii) The reasons for the removals.

(3) The determination as to whether a change of placement has occurred shall be made by the school principal with the agreement of the school district's/supervisory union's Director of Special Education. Where no such agreement is reached, a change of placement shall be deemed to have occurred.

4313.3 Functional Behavioral Assessments and Behavioral Intervention Plans

(a) Not later than ten business days after first removing the child for more than ten school days in a school year or commencing a removal that constitutes a change of placement, an IEP meeting shall be convened to develop an assessment plan. An assessment plan need not be developed if, prior to the behavior that resulted in the removal, the school district had conducted a functional behavioral assessment and implemented a behavioral intervention plan. If the child already has a behavioral intervention plan, the IEP team shall meet to review the plan and its implementation, and modify the plan and its implementation, as necessary, to address the behavior.

(b) As soon as is practical after developing the assessment plan, and completing any assessments required by the plan, the school district shall convene an IEP meeting to develop and implement appropriate behavioral interventions to address that behavior.

(c) If, subsequently, an eligible child who has a behavioral intervention plan and who has been removed from his or her current educational placement for more than ten school days in a school year is subjected to a removal that does not constitute a change of placement, the IEP team members shall review the behavioral intervention plan and its implementation to determine if modifications are necessary. If one or more of the team members believe that modifications are needed, the team shall meet to modify the plan and its implementation, to the extent the team determines necessary.

4313.4 Manifestation Determination Review

(a) If a change of placement or placement in an interim alternative educational setting (IAES) is contemplated, the child's parents shall be notified of that decision on the day it is made and shall be provided with a procedural safeguard notice, as described in Rule 2365.1.2. As soon as possible, but no later than ten school days after the decision is made, a review must be conducted of the relationship between the child's disability and the behavior that is the subject of the disciplinary action. This review shall be conducted at a meeting of the student's IEP team and other qualified personnel.

(b) In conducting a manifestation determination review, the IEP team shall consider all relevant information, such as evaluation and diagnostic results, including:

(1) the results or other relevant information supplied by the parents of the child;

(2) observations of the child; and

(3) the child's IEP and placement.

(c) The child's behavior shall be considered to be a manifestation of his disability unless it is determined that:

(1) In relationship to the child's behavior that is the subject of the disciplinary action, the child's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavioral intervention strategies were

provided consistent with the child's IEP and placement;

(2) The child's disability did not impair the ability of the child to understand the impact and consequences of the behavior that is the subject of the disciplinary action; and

(3) The child's disability did not impair the child's ability to control that behavior.

(d) If, during the manifestation determination review, it is determined that there are deficiencies in the child's IEP or placement, immediate steps must be taken to remedy those deficiencies.

(e) The manifestation determination review may occur at the same IEP meeting where the functional behavioral assessment or the behavioral intervention plan is considered.

4313.5 Determination that Behavior Was Not A Manifestation of Disability

If it is determined that the child's behavior was not a manifestation of his or her disability:

(a) The child may be disciplined in the same manner as would children without disabilities.

(b) The special education and disciplinary records of the child shall be transmitted to the person or persons making the final determination regarding the disciplinary action.

(c) The IEP team shall determine and the school district provide educational services to the extent necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP.

4313.6 Determination that Behavior Was a Manifestation of Disability

If it is determined that the child's behavior was a manifestation of his or her disability, the school district must:

(a) Remedy any deficiencies found in the child's IEP or placement or their implementation;

(a) Consider the appropriateness of continued placement in the IAES, if that is where the child was placed pending the results of the manifestation determination review described in Rule 4313.4; and

(b) Not implement a change in placement as a disciplinary action unless Section (b) above applies.

4313.7 Parent appeal of Non-manifestation Determination Decision

(a) If the child's parent disagrees with a determination that the child's behavior was not a manifestation of a disability, the parent may request a due process hearing, in which case an expedited hearing, conducted by an impartial hearing officer in accord with Rule 2365.1.7, shall be arranged to take up the matter.

(b) In reviewing a manifestation determination, the burden of proof is on the school district to demonstrate that the child's behavior was not a manifestation of the child's disability.

4313.8 Authority of Hearing Officer to Order IAES Placement

A hearing officer may order a change in the placement of a child eligible for special education 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 school district 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 school district 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, who have consulted with the child's special education teacher, will enable the child to continue to progress in the general curriculum. While in the IAES, the child must receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP. 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.

4313.9 Removals for Weapons or Drugs

This rule applies to eligible children who:

(1) possess or carry a weapon at school or a school function; or

(2) knowingly possess or use drugs, not including alcohol or tobacco products, or sell or solicit the sale of a controlled substance while at school or a school function. In those situations, school personnel may make a change of placement by putting the child in an IAES for not more than 45 calendar days, if a child without a disability would be subject to discipline for the same amount of time. The IAES must be determined by the IEP team and be selected to enable the child to continue to progress in the general curriculum. While in the IAES, the child must receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP. 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. For purposes of this rule,

(a) "Weapon" means a "dangerous weapon", as defined by 18 USC Section 930(g)(2), which is "a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 _ inches in length."

(b) "Controlled substance" means a drug or other substance identified under schedules I, II, III, IV, or V in Section 202(c) of the Federal Controlled Substances Act (21 USC Section 812(c)).

(c) "Illegal drug" means a controlled substance but does not include a 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 the Controlled Substance Act or under any other provision of Federal law.

4313.10 Parent Appeal of School District Placement Decision

(a) If the child's parent disagrees with a decision regarding a school district's placement made under these disciplinary procedures, including removal to an IAES, the parent may request a due process hearing, in which case an expedited hearing shall be arranged to take up the matter.

(b) In reviewing a decision of the school district to place the child in an IAES, the hearing officer shall apply the standards in Rule 4313.8 above.

4313.11 Placement During Discipline Appeals

(a) If a parent requests a due process hearing to challenge an IAES placement or a manifestation determination, the child shall remain in the IAES pending the decision of the hearing officer or until the expiration of 45 calendar days from the time the placement was made, whichever occurs first, unless the parent and the school district agree otherwise.

(b) If a child is placed in an IAES and the school district proposes to change the child's placement after expiration of the IAES, during the pendency of any proceeding to challenge the proposed change in placement, the child shall remain in the placement immediately prior to the IAES except as provided in section (c) below.

(c) If the school district determines that it is dangerous for the child to be in the placement immediately prior to the IAES, it may request an expedited due process hearing. At that hearing, the hearing officer shall apply the standards detailed in Rule 4313.8 above to determine whether the child should remain in the IAES for up to another 45 calendar days or be put in another appropriate placement. This procedure may be repeated as often as necessary for the safety of the child or others.

4313.12 Decisions Resulting From Expedited Due Process Hearings

Except as stated in this section, all procedures set forth in Rules 2365.1.6 – 2365.1.9 shall apply to expedited due process hearings brought pursuant to Rules 4313.7, 4313.8, 4313.10 and 4313.11. In all cases, written decisions from expedited due process hearings shall be mailed to the parties within 45 calendar days of the Department of Education's receipt of the request for the hearings. No exceptions or extensions shall be permitted. A decision in an expedited due process hearing is appealable to any Vermont court of competent jurisdiction or the United States District Court for the District of Vermont.

4313.13 Educational Services During Removals

After an eligible child has been removed for more than ten cumulative school days in the same school year, the school district shall provide that child with educational services to the extent necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP. The child's IEP team shall determine the extent to which services are necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP if the removals follow a determination under Rule 4313.4 that the conduct was not a manifestation of the child's disability. School personnel shall determine the extent to which services are necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP if the removals are pursuant to Rule 4313.1.

4313.14 Protections for Children Not Yet Eligible for Special Education Services

(a) A child who has not been determined to be eligible for special education services who has engaged in behavior that makes him or her subject to disciplinary action may assert any of the protections detailed in Rule 4313 if it can be shown that the school district had knowledge that the child was eligible for special education services before the behavior that precipitated the disciplinary action occurred.

(b) For purposes of this section, a school district is deemed to have "had knowledge that the child was eligible for special education services before the behavior that precipitated the disciplinary action occurred" if:

(1) The child's parent had expressed concern that the child was in need of special education services. The concern must be in writing unless the parent does not know how to write or has a disability that prevented a written statement;

(2) The behavior or performance of the child demonstrates the need for special education services pursuant to Rule 2362;

(3) The parent has requested a special education evaluation of the child; or

(4) The child's teacher or other personnel of the school district has expressed concern about the child to the director of special education of the school district or to other personnel in accordance with the school district's child-find or special education referral system.

(c) A school district would not be deemed to have knowledge under the prior provision if, as a result of receiving information specified in that provision, it conducted an evaluation and determined that the child was not eligible for special education services, or it had been determined that an evaluation was not necessary and provided proper notice of the determination to the parents.

(d) If the school district did not have prior knowledge that the child was eligible for special education services, the child may be disciplined in the same manner, as would children without disabilities. If a request for an evaluation is made during the time the child is subjected to disciplinary measures, the evaluation shall be conducted in an expedited manner. Until the evaluation is completed, the child shall remain in the educational setting determined by school authorities, which can include suspension or expulsion without educational services. If the child is determined to be eligible for special education services, taking into consideration information from the evaluation conducted by the school district and information provided by the parent, services shall be provided in accordance with these Rules.

4313.15 Referral to and Action by Law Enforcement and Judicial Authorities

Nothing in these Rules prohibits a school district from reporting a crime suspected of having been committed by a child eligible for special education services. Disclosure of special education records may be made to law enforcement and judicial authorities only as permitted by Rule 2365.2.12.

4312-4313.15 Approved 8/16/2001
4313.1(a) and 4313.2(b)(3) Approved 8/29/2003

April 6, 1987

4100 STUDENT SAFETY

4100 Statutory Authority

The Vermont Statutes Annotated addresses the areas of school attendance, truancy, discipline, punishment, health, safety, and transportation. Refer to the statutes for specific laws.

The subject of "student records" is addressed elsewhere in this manual. [Editor's Note: See Rule 2120.8.3.3]

4101 Every school district receiving federal and/or state funds for program support will develop a program of safety, institute that safety program, and monitor it to make sure it is kept current.

4102 Superintendents and school boards shall develop a comprehensive emergency plan for each school that will be updated and tested annually and a functional emergency organization.

The plan shall include provision of such disasters as fire, smoke, tornado, nuclear disaster, snow, blizzard, ice, flood, earthquake, bomb threat, civil disturbance, bus accidents and other emergencies.

4200 Alcohol and Drugs

4210 Statutory Authority: 16 VSA §1165

4211 Definition

Alcohol and drug abuse (substance abuse) shall be defined as: "the ingestion of a substance in such a way that it interferes with a person's ability to perform physically, intellectually, emotionally or socially." Vermont Office of Alcohol and Drug Abuse Programs.

4212 Policy Requirements

School districts shall adopt an alcohol and drug abuse policy which shall contain the following:

4212.1 Statement of Philosophy.
This policy shall be concerned with the health and well being of all students and the policy shall take into consideration the individual needs of students with problems as well as the right of the majority of students to an education.

4212.2 Education Program.

The policy shall define an educational program consistent with the Vermont Alcohol and Drug Education Curriculum Plan

4212.3 Support and Referral Systems and Cooperative Agreements.
The policy shall provide for a support and referral system for students in distress due to their own or another's use of alcohol or other drugs. Such a system shall include both a clearly defined in-school process for initial assessment, support, and if necessary, referral to community resources of such students, and a written referral agreement with at least one community substance abuse treatment provider approved by the Office of Alcohol and Drug Abuse Programs. Such an agreement should define the process for making an effective referral and the nature and extent of information to be provided during and after such a referral to all parties involved.

4212.3A Immediate Procedures
The policy shall provide for the handling of any alcohol/drug related incident until the student has been discharged to the parent, guardian, social service, medical or law enforcement agency.

4212.3B Emergency
The school district policy shall establish procedures for administering emergency first aid related to alcohol and drug abuse. The procedures will define the roles of the personnel involved.

4212.3C Possession, distribution, etc.
The school shall have a procedure that requires the administration to be immediately informed by a school staff member of any violation of the law, including illegal possession or distribution of drugs or alcohol. The administration shall follow the appropriate legal procedures and due process of law for discipline.

4212.3D Performance and Behavior Related Problems
School district policy shall designate staff available for consultation with a student whose behavior or performance may indicate a problem with alcohol or drug abuse. This staff will determine the need for further screening, education, counseling, or referral for treatment.

4213 Procedures for education

4213.1 Schools shall develop a sequential K-12 alcohol and drug abuse prevention education curriculum as defined in Vermont State Alcohol and Drug Education Curriculum Plan and in Health Education and Traffic Safety and Driver Education requirements of the Standards for Approving Vermont's Public Schools.

4213.2 Schools shall provide for training of school staff such that teachers and health and guidance personnel have a sufficient level of professional development to enable them to competently teach or provide other services required in the school's alcohol and drug abuse prevention education program. A minimum training program should be directed toward the following areas:

Pharmacology
Chemical Use, Abuse, and Dependence
Chemical Dependence and the Family
Societal and Personal Attitudes
Policy and Legal Issues
Support and referral Systems for Students in Distress
Curriculum Development, Methods, and Classroom Issues
School Climate
Drinking and Driving

In addition there shall be an orientation for the entire school community on the program, its intent, and alcohol and drug issues in general.

4214 Community Involvement
Schools shall provide for a program to inform the community about the school's alcohol and drug prevention education program, alcohol and drug abuse prevention issues, and community-wide responsibility for effective alcohol and drug abuse prevention.

4215 Annual Report
Schools shall submit an annual report, due to the Commissioner of Education by July 1 of each year, which includes a description of the school's alcohol and drug abuse prevention program, the apparent effectiveness of the program, an evaluation of the curriculum, and an assessment of the problems of alcohol and drug abuse within the school district. This report shall use the standard format provided by the Department of Education.

4220 Prescription Drugs

4221 Statement of Purpose
Many children are able to attend regular school because of the effective use of medication in the treatment of chronic disabilities or illnesses. When possible medication shall be administered in the home. However, any student who is required to take medication during the regular school days must comply with the school regulations, which shall require the following.

4222 Procedures
The school shall assure that the following are provided:

4222.1 Written orders from a physician detailing the name of the drug, dosage, time interval the medication is to be taken, diagnosis, and reason for giving.

4222.2 Written permission from the parent or guardian requesting that the school district comply with the physician's order.

4222.3 Medication brought to school in a container appropriately labeled by the pharmacy or physician.

4222.4 A locked cabinet for storage of medications.

4222.5 Opportunities for communication with the pupil, parent, and physician regarding the efficacy of the medication administered during school hours.

September 17, 2007

4300 Disciplinary Action

4310 Statutory Authority 16 VSA §1162

4311 Procedures

When a student is subject to disciplinary action, the school district shall afford the student due process procedures as follows:

4311.1 In all cases of short-term suspension from school, which is generally regarded as 10 days or less, the student and his or her parent/guardian shall be given an opportunity for an informal hearing before an appropriately designated school official. Except for cases set forth in paragraph 4311.3, the hearing must precede the suspension and the district shall provide:

(1) notice of the charges;

(2) explanation of the evidence against the student;

(3) opportunity for the student to tell his or her side of the story; and

(4) decision in writing to the parent/guardian.

4311.2 In cases of a long term suspension which is generally more than 10 days unless a school district establishes a shorter period, or an expulsion, the student and his or her parent/guardian shall be given an opportunity for a formal hearing before the school board and the district shall provide:

(1) written notice of the following:

(a) nature of charges against the student;

(b) date, time and place of hearing;

(c) right to legal representation;

(d) possible penalties involved;

(2) opportunity to present evidence;

(3) opportunity to cross-examine witnesses; and

(4) decision in writing to parent/guardian

4311.3 (1) When a student, because of his or her conduct or condition, is an immediate threat to himself or herself, others, property or educational environment, the school district may take whatever action is appropriate under the circumstances, including, but not limited to, immediate suspension pending a hearing as soon as possible thereafter. In addition, in cases where a student brings a weapon (as defined in the federal Gun-Free School Act) to school, the school district must refer the student to a law enforcement agency and expel the student for a period of not less than one calendar year unless such expulsion is modified in accordance with the provision of 16 VSA §1166(b)(2) in circumstances such as but not limited to:

(a) the student is unaware that he or she has brought a weapon to school,

(b) the student did not intend to use the weapon to threaten or endanger others,

(c) the student is disabled and the misconduct is related to the disability,

(d) the student does not present an ongoing threat to others and a lengthy expulsion would not serve the best interest of the student.

(2) In situations where a student with a disability brings a weapon to school, the provisions of regulation 4312(2) shall apply. In any such situation, an opportunity for a hearing prior to an expulsion must be provided prior to the expulsion, pursuant to 16 VSA §1166(b)(2)

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 2360.2(d)(1) 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 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 2360.2(d)(1), 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 4313.9(a), to school or at a school function, he or she may be placed in an interim alternative educational setting (IAES) in accordance with the procedures set forth in Rule 4313.9 and Rule 1253. The student's 504 team shall determine the IAES, and the services provided in the IAES, in accordance with the procedures set forth in Rule 4313.9. 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 a school district, the parent may request an impartial due process hearing, and the procedures in Rules 2365.1.6(c) 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. Department 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 school district 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 school district 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 school district must 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 must--

(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) A school district 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) must 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 must 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 must--

(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 must 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 must 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 school district must arrange for an expedited hearing, which must occur within 20school days of the date the hearing is requested and must 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 must 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 must 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 must 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. A school district 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 must 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 must 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 must 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 4313.4, 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.

4400 HOME STUDY STUDENTS

4400 Integration of Home Study Students

4401 Statutory Authority: Section 1(c) of Act 119 of 1998; 16 VSA §563(24)

4402 Definitions

"Facilities" means the portions of a school building and grounds used by students for classes, study and co-curricular or extracurricular activities.

"Home study student" means a student enrolled in a registered home study program pursuant to 16 VSA §166b.

"Integrated course" means a course covering two or more subjects that are taught in a unified manner by one teacher or team where the subjects cannot be separated into discrete sections for purposes of student attendance.

4403 Part-time Enrollment of Home Study Students in Public School Academic Programs

4403.1 A home study student shall be eligible to enroll as a part-time student in a school operated by his or her district of residence or, if the district does not operate a school, in a public school for which his or her district of residence is required to pay tuition.

4403.2 Each school board shall adopt, by July 1, 1999, policies and procedures to ensure that home study students who request part-time enrollment are accepted into those courses or programs, and are furnished with required learning materials, on the same basis as full-time students.

4403.3 Policies and procedures adopted under this rule shall:

(a) upon inquiry by a home study student or parent, require the provision by the district of the student's residence of information concerning the availability of part-time enrollment in school. Such information shall include procedures, including registration deadlines, that home study students must follow to enroll on a part-time basis in the schools operated by the home study student's district of residence. In the event the district of residence does not operate a school in the grades appropriate to the inquiring student, the student or parents shall be given information on how to contact neighboring school districts that accept tuition students from the district of residence.

(b) apply the same enrollment procedures and deadlines to home study students that apply to full-time students.

(c) specify any enrollment capacity limits that the school board will apply to particular academic courses or grade levels. Capacity limits shall apply equally to home study and full-time students.

(d) establish criteria to determine whether home study students are eligible to enroll in integrated courses and courses that are available only to students who fulfill prerequisites. Criteria applied to courses with prerequisites shall be applied equally to home study and full-time students. Reasonable indications that academic criteria have been met, including results from achievement tests or other indications of adequate preparation, may be required of home study students, so long as those students are required to meet the same prerequisite standards as full-time students.

(e) establish informal and expeditious processes to appeal denials of requests for part-time enrollment to administrators and/or the school board.

4404 Participation of Home Study Students in Public School Co-curricular and Extra-curricular Activities.

4404.1 A home study student shall be eligible to participate in or, when selection to participate in an activity is made on a competitive basis, to try out for, one or more co-curricular or extra-curricular activities at a school operated by his or her district of residence or, if the district does not operate a school, at a public school for which his or her district is required to pay tuition. This rule is not intended to confer a right upon any student to participate in any activity. Although a home student need not enroll in academic programs to participate in activities under this rule, he or she must show compliance with insurance, physical examination, age, transfer and other requirements of the Vermont Principals Association on the same basis as enrolled students.

4404.2 Each school board shall adopt, by July 1, 1999, policies and procedures to ensure that home study students who wish to participate in co-curricular or extra-curricular activities are accepted into those activities without first being required to enroll as part-time students at the sponsoring school.

4404.3 Policies and procedures adopted under this rule shall:

(a) upon inquiry by a home study student or parent, require the provision by the district of the student's residence of information

concerning the eligibility of home study students to participate in co-curricular or extra-curricular activities. Such information shall include procedures, including registration deadlines, that home study students must follow to participate in activities at schools operated by the home study student's district of residence. In the event the district or residence does not operate a school in the grades appropriate to the inquiring student, the student or parents shall be given information on how to contact neighboring school districts that accept tuition students from the district of residence.

(b) apply the same activity registration deadlines to home study students that apply to full-time students.

(c) apply the same academic eligibility requirements to home study students that apply to full-time students. Policies may require the parents of home study students to provide assurances that the school's academic eligibility standards are being met. Such assurances may be required at the same intervals during the year as is required of full-time students. A home study parent's assurance that the student meets the district's academic standards, provided at the intervals required by the school, shall be sufficient to satisfy academic eligibility requirements.

(d) establish priorities and criteria for admitting students to particular activities. When space is limited in a particular activity, preference may be given to enrolled students as long as the reporting requirement in §4404.4 of these rules is met. Procedures for admitting home study students to activities with limited spaces may include lotteries, first-come first-served waiting lists and performance-based criteria for participation on sports teams or in activities.

(e) policies adopted in compliance with this rule shall establish informal and expeditious procedures to appeal denials of requests to participate in activities to administrators and/or the school board.

4404.4 When a home study student's request to participate in an activity is denied on the grounds that space is not available and that preference is given to full-time students, the school shall, within 30 days of the denial, notify the Home Study Consultant at the Department of Education on a form provided by the Department.

4405 Use of School Facilities by Home Study Students

4405.1 A home study student may use facilities at a school operated by his or her district of residence or, if the district does not operate a school, at a public school for which his or her district is required to pay tuition.

4405.2 Each school board shall adopt, by July 1, 1999, policies and procedures to ensure that home study students are allowed to use school facilities on the same basis as full-time students.

4405.3 Policies and procedures adopted under this rule shall:

(a) apply to home study students the same criteria, procedures and deadlines for requesting the use of school facilities as are applied to full-time students.

(b) upon inquiry by a home study student or parent, require the provision by the district of the student's residence of information concerning the use of school facilities operated by the district. In the event the district does not operate a school in the grades appropriate to the inquiring student, the student or parents shall be given information on how to contact neighboring school districts which accept tuition students from the district of residence.

(c) provide for the establishment of criteria to determine whether sufficient space is available to comply with specific requests for facilities use. Criteria may also be developed to establish fees, to be applied equally to home study and full-time students, for security, janitorial or other services not normally available at the time of the requested use.

6000 SCHOOL BUILDINGS AND SITES 5/1/08

6001 State Board of Education Rule #6001 School Bus Idling

6002 Statutory Authority: 23 V.S.A. § 1282(f)

6003 Statement of Purpose

It is the purpose of these rules to implement 23 V.S.A. §1282(f) by providing for the limited idling of school buses in specific circumstances.

6004 Definitions

The following definitions shall apply to these rules:

a. "School Bus" includes all vehicles operated by or for the district for the purpose of transporting the district's students to or from school or school-related activities, whether the vehicles are owned by the district or contracted from vendors.

b. "School grounds" includes any area adjacent to school buildings and used at any time for school-related activities, including parking lots, playing fields, and driveways.

c. "Idling" means the primary propulsion engine is running while the vehicle is stationary.

6005 Provisions

The district shall communicate this rule to all parents, drivers, and staff. The provisions of this rule shall be incorporated into transportation contracts and agreements.

The employer of a school bus driver shall ensure that the driver is informed of the rule and any related district policy, and that all complaints of non-compliance are reviewed and that appropriate corrective actions are taken.

The operator of a school bus:

a. shall turn off the primary propulsion engine immediately upon arrival at student loading or unloading areas on school grounds, and shall not restart the engine until the bus is loaded or unloaded and is ready to depart; and

b. shall not otherwise idle the bus engine for more than five (5) minutes in a sixty (60) minute period on school grounds.

The provisions of this rule shall not apply under the following conditions:

1. when the engine is required to operate special equipment for disabled persons;
2. when the engine is required to operate safety equipment other than lighting systems, such as windshield defrosters, and the operation of the equipment is necessary at that time to address specific safety, traffic, health, or emergency concerns; and
3. when the vehicle is being serviced and the operation of the engine is essential to the service being performed.

6100 BUILDING PROJECTS ELIGIBLE FOR STATE AID

6110 Statutory Authority: 16 V.S.A. Chapter 123

6111 Policy and Purpose

(a) It is the policy of the State of Vermont to encourage renovation of, additions to, or construction of school facilities where necessary to meet the educational needs of Vermont pupils. Any such projects should be developed with standards of quality for public schools set forth in 16 V.S.A. §165 in mind and in a cost and energy efficient manner. Further it is the policy of the State Board to encourage the use of existing infrastructure to meet the needs of Vermont students in accordance with the State Board policy on historic preservation. Joint construction projects between two or more school districts and consolidation of buildings within a district where feasible and educationally appropriate are also encouraged. The State Board, in favor of local objectives to better the learning environment, shall liberally construe these rules. These rules are intended to establish the extent to which a proposed project is eligible to receive state construction aid, but shall in no way limit the amount of construction that a local district may authorize or expend on a project.

(b) It is the purpose of these rules to provide the procedures and standards for school districts applying for school construction aid. In order for the State Board of Education to approve a construction aid project, it must comply with the applicable provisions of Rules 6100 et seq. Approval of the project may be for the whole of the project or only for such component parts as found by the State Board of Education to meet the requirements set forth herein.

6112 Definitions

"Commissioner" shall mean the Commissioner of Education, or his or her designee unless the context clearly requires otherwise.

"Construction aid project" means construction of a school building, renovation or alteration of an existing school building or purchase of a school building for which a school board may seek a grant of financial aid pursuant to 16 V.S.A. §3448. A construction aid project may include the purchase and installation of relocatable units, provided such units meet the minimum standards applicable to permanently constructed educational spaces.

"School", "school district", or "school board" where the context allows shall in addition to their ordinary meaning include an independent school or board of trustees as identified in 16 V.S.A. §3447.

6113 School Building Information

The Commissioner from time to time shall publish information to help school officials maintain school buildings in safe and sound condition; achieve effective design, flexibility and economy in a construction aid project; and secure expeditious approval of grants for construction aid projects.

6114 Requirements Applicable To All Projects

6114.1 Regulations of Other Agencies

(a) These rules are in addition to the requirements of other state agencies with respect to school construction. In order to be eligible for construction aid, school building projects must meet standards that apply to school construction adopted by the Department of Labor and Industry, the Agency of Natural Resources, the Division for Historic Preservation, the Department of Health, the Department of Agriculture, the Agency of Transportation, and any standards of other state or federal agencies and local or regional planning authorities.

(b) The Commissioner shall, subject to the consent of the agencies involved, coordinate the preliminary approval processes for public schools for all agencies of state government with responsibilities relating to school buildings and sites. However, the school district shall be

responsible for securing all necessary permits or approvals from these agencies.

6114.2 Site Requirements

Before final approval the school board shall request and the Commissioner shall grant site approval if the site meets the approval of other applicable agencies and is adequate for: 1) the educational programs the school board plans to conduct now and in the future as reflected in the approved educational specifications; 2) the anticipated community uses of the school facilities; 3)the space needed for the planned construction and its necessary service areas; and 4) the growth potential of the district. All construction and site development to be included in a construction aid project must occur on land to which the school district has clear title in fee simple or a permanent deeded easement or right-of-way. Land not owned by the district but convenient to the site on which a construction aid project will occur may be considered as part of the school site when the Commissioner finds that the land is suitable for daily school use and the school has permanent unrestricted access.

Any site considered by a school board shall have the capacity for a water supply system and sewage disposal system sufficient to meet the needs for the planned occupancy of the building as determined by the approved educational specifications.

The school board shall evaluate air quality issues and environmental hazards when selecting a site for a new school or addition so as to avoid or minimize the potential for contaminants and submit the analysis with the application for construction aid.

6114.3 Accessibility Standards

School construction shall comply with all state and federal laws regarding access rights to public buildings for persons with disabilities. These include the requirements of 21 V.S.A. §271-277, Section 504 of the Rehabilitation Act of 1973 and any regulations promulgated in connection therewith.

6114.4 Bond Amortization

School boards issuing bonds for capital construction shall repay the principal in not more than twenty years except as provided by 16 VSA §777.

6115 Application Procedures for Construction Aid

6115.1 The application procedures for construction aid shall consist of two parts: the preliminary application and a final application. Both applications shall be made on forms prescribed by the Commissioner.

6115.2 Each school district which has voted funds or issued bonds for the total cost to either construct or purchase a new school, or make extensive additions or alterations to its existing school plant to adequately house its pupils, or to conserve energy, can make application in writing to the State Board of Education for construction aid.

6116 Preliminary Application

6116.1 The Commissioner may approve a preliminary application if he or she finds that the project or any part thereof fulfills a need which cannot reasonably be met by another means and that is occasioned by:

(a) facilities which are inadequate to provide programs required by state or federal rule or regulation;
(b) deterioration of existing buildings;
(c) conditions which are unsafe or threaten the health of students or employees;
(d) excessive energy use or cost resulting from the design characteristics of the building.

6116.2 A school board shall supply evidence with its preliminary application that it has conducted a facility analysis consistent with these rules and considered the availability of classrooms or other accommodations in neighboring schools as a reasonable means of meeting the urgent need on which its application is based.

6117 Facility Analysis

A facility analysis means a complete analysis of the existing facility. The analysis shall identify the areas of deficiency consistent with the criteria listed in 16 V.S.A. §3448(a)(2)(A). The analysis shall include, as appropriate for the project, the following information:

(a) demographic data and enrollment projections,
(b) the current floor plan and useable square footage,
(c) economic impact on the community, condition of the infrastructure of the existing building, including existing health and safety conditions, and
(d) history of maintenance on the existing facility.

6118 Determining a Priority of Projects

Upon receipt of a preliminary application, the Commissioner will evaluate and rate the degree of need for construction in accordance with the *System for Rating Proposed School Construction Projects* adopted by the State Board of Education.

6119 Rating Eligible Projects:

6119.1 The State Board shall adopt and from time to time update a document entitled *System for Rating Proposed Capital Construction Projects* in order to determine the priorities for construction aid.

6119.2 The rating system for prioritizing proposed capital construction projects shall require consideration of projects according to objective criteria and a review of data submitted by school districts. The rating system shall include consideration of the following factors:

(a) type of space requested;
(b) current space availability;
(c) current health and safety status;
(d) physical condition of the facility;
(e) impacts of maintenance on condition of facilities;
(f) short and long-range enrollment projections; and
(g) consolidation or union district formation

6119.3 The Commissioner shall notify in writing each district of its rating. A school district within 30 days of notification may appeal its rating in writing to the State Board of Education. The State Board of Education, after offering the school district the opportunity for a hearing, may affirm the rating of the Commissioner or, if there is substantial evidence to justify it, modify the rating accordingly.

6120 Preliminary Design Work and Cost Estimates

Upon notification of its rating status, a school district may submit to the Commissioner preliminary design work and a cost estimate for the proposed project.

6121 Educational Specifications

Plans and specifications for all construction aid projects for new school buildings, and alterations or additions to an existing school buildings shall be based on educational specifications approved by the Commissioner. The educational specifications shall incorporate the results of the facilities analysis required by Rule 6117 and enrollment projections for not less than five nor more than ten years beyond the anticipated completion of the work. Based on the results of the facilities analysis, the educational specifications shall provide information on each type of space and outdoor area to be included in the facilities of the school.

6122 Enrollment Projections

Enrollment projections to be incorporated in educational specifications for a construction aid project shall be based on and include: 1) a ten year history of enrollment by grade level of resident and tuition pupils within the district; 2) when available, live birth data for the district and other districts from which it regularly receives and will continue to receive tuition pupils, and 3) enrollment projections for not less than five nor more than ten years beyond the anticipated completion to the work.

6123 Construction Design

Plans and specifications for a construction aid project shall be prepared by a registered architect. Unless otherwise approved by the Commissioner and subject to state licensing requirements, plans for construction projects which do not impact or alter instructional areas shall be prepared by a registered architect or a registered professional engineer.

When appropriate, the Department of Education may request a review by the Department of Aging and Disabilities to assess the architectural accessibility of a proposed project.

6124 The Maximum Cost for State Participation

6124.1 The State Board of Education shall adopt and update annually a document entitled *Capital Outlay Financing Formula*.
The capital outlay formula shall establish the maximum and minimum square footage parameters by school size, and grade range through a square footage allowance per student or program. The formula shall also establish an allowable cost per square foot of construction.

6124.2 The Commissioner shall determine the maximum eligible cost for construction aid for the proposed project using the information provided by the district and applying the Capital Outlay Formula. The cost and space parameters shall be fixed at the time the State Board approves the final application.

6125 Assigning a Priority to Projects

After all appeals under rule 6119.3 have been concluded, but in no case later than December 1 of each calendar year, the State Board of Education shall list in priority order those projects that have received preliminary approval from the Commissioner and voter approval. The State Board shall approve the priority order of projects at its December meeting. The order of priority shall be as follows:

1. The State Board shall assign first priority to emergency projects which address threats to the health and safety of students and staff.

2. The Board shall assign second priority to voter approved construction projects in excess of $10,000 which extend the useful life of the building but which do not make extensive additions or alterations to existing facilities to house or educate pupils.

3. All other voter approved projects shall receive a priority based on consideration of the relative degree of need as determined by *The System for Rating Proposed School Construction Projects* and 16 VSA § 3448(a)(2)(A)and (B).

4. By January 15th of the following year, the State Board of Education shall present the house and senate institutions committees with a list of projects in priority order with the estimated cost of each project.

6126 Approval of Final Application

6126.1 The State Board may approve the final application for a project that has:

(a) received preliminary approval from the Commissioner;

(b) received approval from the voters of the district for the total cost of the project either through the authorization of a bond or other funds;

(c) made arrangements for project construction supervision by persons competent in building trades;

(d) provided for financing of the construction project during a period prescribed by the State Board; and

(e) otherwise met the requirements of sections 3447-3456 of Title 16 and these rules.

6126.2 In order to be eligible for construction aid, no construction shall begin before the State Board of Education approves the final application

6127 Final Application

A school district seeking construction shall file a final application on a form prescribed by the Commissioner that provides evidence of the following:

1. Approval of a preliminary application consistent with rule 6116.

2. A review by the Agency of Natural Resources of the water supply and sewage disposal conditions at the existing site that the board is considering.

3. Approval of the educational specifications by the Commissioner of Education

4. Completion of the preliminary design work for the project by a registered architect or engineer as appropriate

5. A determination of the maximum eligible cost for state capital construction aid by the Department of Education for the proposed project

6. A successful vote consistent with Title 24 V.S.A. §1758(b) for financing 100% of the cost of the project.

7. Financing of the project and a system of cost accounting for the project separate from the accounting system for the district.

8. Final plans. The school shall submit to the Commissioner copies of the construction plans either in computer aided design (CAD) format, if used, or, if not, in the form submitted by the architect or engineer to the school board or board of trustees.

9. Compliance with public bidding procedures consistent with 16 V.S.A.§559 and Rules 6300-6400.

10. Employ a clerk-of-the-works to oversee the completion of the project. The clerk-of-the-works may not be a current employee or, without the approval of the Commissioner, a former employee of the district, or the contractor, construction manager, architect or engineer for the project.

11. Adequate builder's risk insurance and professional liability insurance.

12. Unless otherwise permitted by the Commissioner, a performance bond or irrevocable letter of credit equal to or exceeding the amount of the construction contract for the project covering the contractor or construction manager.

13. Approval from any governmental agency or authority with rules that affect school construction and from which approval is required.

14. Other information deemed necessary by the State Board for the type of construction aid project.

6128 Commencing Construction

When the Department of Education has received a completed application and all necessary exhibits as required, the Commissioner shall notify the school board and give authorization to commence construction pending approval of the application by the State Board at its next meeting

6129 Emergency Aid Approval

6129.1 A school board seeking emergency aid under this section shall make application on a form prescribed by the Commissioner. The application shall contain:

(a) information on how the project will be funded;

(b)

(i) a detailed description of the nature and extent of the imminent health and safety hazards that exist, and the extent they would be alleviated by the project, and

(ii) certification by an independent and qualified authority that an imminent health and safety

hazard exists to the building's occupants unless the emergency work is completed; and

(c) the estimated cost of the emergency construction with documentation where feasible by two or more independent qualified cost estimators;

6129.2 Upon determination that such emergency exists and can be corrected in a manner consistent with the construction proposed in the application, the Commissioner may award such funds as are permitted under 16 V.S.A. §3448(d).

6130 During Construction

A set of the approved plans and specifications shall be kept at the construction site throughout construction. Changes from the approved plans or specifications for a construction aid project relating to any state requirements, shall not be incorporated into the project without prior approval of the appropriate state agencies which have approved the plans and specifications.

All change orders during construction that increase or decrease the scope of the project as approved by the State Board of Education shall be submitted to the Commissioner. The Commissioner may approve all or a portion of the change orders for eligibility for school construction aid.

6131 Indoor Air Quality

The school board shall adopt a plan which addresses indoor air quality during all phases of construction. This may include, but is not limited to, temporary modifications to the existing ventilation system and provisions for the containment and proper exhaust of job-site pollutants, including dust, and volatile organic compounds (VOC's). Wherever practicable, the plans shall specify a minimum of one week following the completion of construction before occupancy to allow off-gassing. The plans and specifications shall also provide for commissioning of the ventilation system in accordance with the requirements of Rule 6143.4 herein.

6132 Completion of Construction:

Upon completion of a project the builder shall furnish to the school board a full set of plans and specifications for the project as built.

6133 Awarding of Construction Aid

6133.1 First Award

Upon satisfactory evidence that a project approved under these rules is under construction and upon appropriation by the general assembly of funds sufficient to fund the state aid due under Title 16 VSA §3448, the State Board shall certify an award for the project to the commissioner of finance and management who shall issue a warrant for the payment of one-half of the award. If no funds were available for a first award and if the approved project has been completed, the State Board shall certify an entire award upon completion of an inspection as outlined below and a final audit of expenditures.

6133.2 Final Award

In order for the school district to receive its final award, the school board shall:

1. Notify the Commissioner in writing when the project is completed and request a final state agency inspection of the work. The following or their designees shall be present at the final inspection: architect, superintendent, general contractor, a member of the school board and clerk-of-the-works.

2. Notify the Commissioner when all changes and additions listed at the final inspection have been made and the project is complete.

3. Submit a final Heating Ventilation and Air Conditioning (HVAC) Commissioning report certifying compliance with minimum requirements specified in Rule 6143.4 and with all other provisions of the HVAC commissioning plan for the project.

4. Notify the Commissioner that the project is ready for audit when canceled checks and invoices for all project costs are returned.

6134 Costs Eligible for Construction Aid

1. Emergency projects costs required to address imminent threats to safety and health of students or employees for which construction is necessary

2. Fees for permits, clerk-of-the-works, legal, architectural and engineering services

3. Razing existing on-site structures

4. Installation of utilities and associated costs either on-site or where legal right-of-way is obtained by the school district, including grading, drainage facilities, power plants, sewer, water, wells and pumps, waste treatment, electricity, roads, walks, parking areas and lighting

5. Athletic fields and other site development projects necessary to provide exterior facilities to carry out an approved educational program

6. Landscaping incidental to the construction

7. Construction to meet state agency regulations, including but not limited to fire and safety, environmental, and VOSHA

8. Roof replacement if:

   (a) it is a structural improvement which will extend the life of the building, or

   (b) the roof has exceeded its life expectancy and will be completely replaced and upgraded

9. School building construction or purchase, and extensive additions, alterations and renovations to existing schools consistent with 16 V.S.A. §3448(a)(2)(A)

10. Fixed equipment approved by the Commissioner

6135 Partially Eligible Costs

1. Swimming pools, skating rinks, theaters, and other structures with valid education functions but primarily programmed for community use and/or revenue production are to be counted into the total space allowances eligible for construction aid at a percentage which is the ratio of educational use to total use; such percentage to be determined in each case by the Commissioner. Auxiliary spaces, such as locker rooms, changing rooms, spectator areas and mechanical equipment areas may be included as partially eligible costs.

2. School construction on land or buildings which are part of a permanent deeded easement or right-of-way is eligible for state participation as a partially eligible cost at a percentage to be determined by the Commissioner.

6136 Non-eligible Costs

1. Structures or spaces designed exclusively for use of other agencies or services such as community centers, town offices, or civil defense shelters

2. Repair or maintenance projects that do not amount to extensive additions, alterations or renovations

3. Stadiums

4. School furniture, computers, computer hardware, cleaning equipment and supplies

5. Interest on bonding or short term borrowing
6. Time spent on the construction project by school board members or employees of the district

7. Deferred Maintenance. No state construction aid shall be available for any proposed project which has arisen in whole or in part from significant deferred maintenance. For the purpose of this section, "deferred maintenance" means the lack of reasonable and timely maintenance including periodic minor repairs of school buildings and mechanical systems.

8. Office space for supervisory union personnel, including but not limited to, space for the superintendents of schools, business managers, special education coordinators, curriculum coordinators or their staff.

9. All costs associated with land acquisition.

6137 Questionable Costs of Spaces

1. Costs or spaces not falling clearly within the list of eligible or partially eligible costs or spaces and not specifically excluded as non-eligible shall be submitted to the Commissioner for status determination prior to project commencement, or shall automatically be considered as not eligible for construction aid.

2. Districts aggrieved by the decision of the Commissioner regarding eligible costs may appeal to the State Board of Education. The State Board after opportunity for hearing may affirm, modify or reverse the decision of the Commissioner.

6138 Minimum Requirements

If one or more of the items set forth in Rule 6139 are included in the proposed construction aid project, the minimum requirements set forth therein shall apply by grade range for program and service areas as outlined in the capital outlay formula. All student counts are calculated on the basis of the approved enrollment projection for the intended use of the space as set forth in the educational specifications unless otherwise indicated.

6139 Minimum Requirements and Specific Program Space Needs

6139.1 General purpose classrooms: Classrooms shall be suited to the teaching strategies employed. There shall be effective acoustical separation between teaching stations so that learning activities in one area do not distract from learning activities in another. Storage spaces shall be provided and appropriately designed for their intended purposes. The ceiling height shall be 8 feet except where other wise required for the intended use of the room. Ceiling height shall be measured from the floor to the lowest projection from the ceiling, not including instructional apparatus.

6139.2 Kindergarten/early education: Classrooms shall include space for large and small group work; for gross-motor physical activity; for activity with learning materials; for quiet reading; and for accessible storage of learning materials.

6139.3 .Early Education: Rooms for education of children prior to legal school age may be incorporated in a construction aid project and must be aligned with the Early Childhood Program Regulations established by the Child Care Division of the Agency of Human Services' Social and Rehabilitation Services.

6139.4 Visual art rooms, combined art and music rooms:
Work space including teacher preparation space with directly accessible storage shall be provided for the school's curricula in the arts. If flammable materials are used, the space shall be furnished with a fire extinguisher, a fire blanket, and separately vented storage. If the preparation space is used for any activity which may cause the production of hazardous vapors, it shall be furnished with a mechanical system for exhausting such vapors directly to atmosphere.

6139.5 Technology Education and Family and Consumer Sciences: Instructional and storage spaces shall be appropriately designed for their intended purposes as determined by the school's curricula.

6139.6 Libraries: There shall be sufficient space for furniture for circulation materials and catalogues, and spaces for audiovisual use and small group work. There shall be access to telephone, work space and clean up facilities and storage of library supplies.

6139.7 Gymnasium: For middle or junior high school, floor space shall be a minimum of 42 ft. x 74 ft. For high schools, floor space shall be a minimum of 50 ft. x 84 ft. In addition, at least 3 feet of unobstructed space outside the boundaries of the designated activity area shall be provided. In new construction a separate and directly accessible storeroom shall be provided for physical education equipment and other portable furnishings used. The ceiling height shall be determined by the activities described in the educational specifications. Minimum ceiling height for a gymnasium shall be 22 feet.

6139.8 Science laboratories: There shall be a sufficient number of classrooms to support the described program of studies each with learning stations equaling the number of students intended to occupy these spaces. Learning stations shall include gas, water and electricity as required by the curriculum. The space shall include facilities to wash chemical spills from the eyes and body, lockable storage and display space, and a separate vented chemical storage area.

6139.9 Project Rooms or Small Group Activity Rooms:
Such rooms shall be appropriate for the anticipated activities and conveniently located to the larger instructional areas. There shall be effective acoustical separation, and appropriate storage areas.

6139.10 Computer Labs: The number of computer stations shall be sufficient to accommodate the anticipated class size. There shall be adequate lighting, ventilation and storage areas.

6139.11 Multipurpose Rooms: Accessible storage areas shall be provided for all programs using the space for instructional purposes, and acoustical separation shall be provided from other teaching stations or classrooms. The ceiling height for a multi-purpose room shall be 12 feet.

6139.12 Maintenance and Janitorial Storage: Appropriate accessible space for storage of supplies and materials shall be provided as well as clean up facilities with availability of hot water.

6139.13 Special Services: Resource rooms and individual instructional areas shall be provided with appropriate ventilation, lighting and acoustic separation.

6139.14 Places of Assembly: Any room to be used for assembly purposes or larger group meetings shall be provided with appropriate acoustics so that speech may be heard clearly throughout the room.

6139.15 Food Service

6139.15.1 Kitchen space for the preparation of meals for on site production only shall include areas for food preparation, serving, dishwashing, receiving and storage as determined for the intended use of the space. The kitchen area shall include appropriate space for storage of brooms and cleaning supplies as well as a separate area for the staff to use for clean up.

6139.15.2 Storage space intended for storage of perishable items not requiring refrigeration shall be designed so that the temperature within the space will not be heated above 60 degrees Fahrenheit or fall below freezing at any time.

6140 Lighting

In all classrooms or other areas where instruction routinely takes place, the artificial illumination installed as part of a school construction project shall be capable of providing work surfaces with at least 50 foot candles of light, without significant glare, except where the intended use of the area requires a higher level of illumination. Illumination guidelines for special applications or other areas shall be as described by Ninth Edition Illuminating Engineering Society of North America Lighting Handbook.

6141 Toilets, Hand Washing Facilities and Drinking Fountains

Installation of toilets, hand washing facilities and drinking fountains as part of a school construction project shall comply with the rules adopted by the Plumbers Examining Board in accordance with 26 V.S.A. § 2173, and requirements of the Department of Labor and Industry. Public toilets shall be provided in any part of the building to be used by the public.

6142 Energy Efficiency Standard

Equipment, design, and performance aspects of the proposed construction or improvement and all related systems shall meet or exceed the American Society of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE) Standard ASHRAE/IES 90.1-1989; Energy Efficient Design of New Buildings.

6143 Ventilation

6143.1 Ventilation design for all new schools and additions for which construction aid is sought, including modular or relocatable units, shall comply with minimum standards specified in ASHRAE 62-1989.

In addition, ASHRAE 62-1989 shall apply to any renovations of existing building in which the airflow is being altered as a result of:

(a) a new heating system or new heating plant;

(b) new HVAC controls;

(c) substantial reconfiguration of interior partitions; or

(d) treatment of any portion of an existing ventilation system, including but not limited to replacement, or upgrades.

6143.2 Where required under Rule 6143 compliance with ASHRAE 62-1989 shall be required throughout all renovated sections of the school, in addition to any other sections where the ventilation system is affected directly or indirectly by components located within the renovated area.

6143.3 Project specifications for all new construction, additions, or renovations shall include a building commissioning plan. At a minimum, the building commissioning plan shall identify a process for verifying the performance of the new or modified HVAC system(s) in accordance with approved project specifications.

6143.4 The HVAC commissioning plan shall clearly specify the procedure for verification of system performance, and shall require certification by a registered engineer.

HVAC commissioning shall include but not be limited to comprehensive testing of the equipment and controls in all operating modes. An air balance report shall be prepared by a

qualified professional, and shall be utilized by the commissioning agent in assessing system performance. Prior to the release of state funds, the school board shall submit to the Commissioner a final HVAC commissioning report, certifying that all HVAC equipment and controls were installed as specified, that the system is operating according to manufacturer's and project specifications, and that all controls are properly programmed. Bid specifications shall provide for the contractor to give school building management personnel appropriate training, operating manuals for HVAC components, and relevant information concerning equipment specifications, operations, maintenance schedules and routines.

6144 Finishes

The walls, ceilings and floors of a school shall be finished with easily cleanable surfaces in all occupied parts of the building. Finishes for all occupied areas shall use materials that emit as few VOC's as possible. The school board shall allow sufficient time prior to occupancy for curing of finishes and off gassing of potential pollutants.

6145 Energy Retrofit Projects Eligibility for State Aid, Definition

"Energy retrofit projects" include any improvements undertaken primarily to address excessive energy use or cost resulting from the design characteristics of the building. Such projects may include but are not limited to lighting retrofits, heat recovery, fuel conversions, HVAC systems & controls, and thermal shell improvements.

6145.1 Cost Effectiveness

Only those projects which have completed a life cycle cost analysis and demonstrate energy savings shall be eligible for construction aid. The life cycle cost analysis shall utilize the estimated total project costs. The life cycle cost analysis shall be for a period of time equal to the anticipated life of the proposed improvement. Life cycle cost means the present value purchase price of an item, plus the replacement cost, plus or minus the salvage value, plus the present value of operation and maintenance cost.

Only those projects that are identified as being energy cost-effective as determined by a registered professional engineer or certified architect, shall be eligible for construction aid. A statement from the engineer or architect shall accompany the school building aid application.

6200 Variance

6201 On written request of a school board, the State Board of Education may approve the use of an alternative specification or procedure for a proposed construction aid project for any requirement of these rules when it finds that the intent of the rule can be met by the alternative.

6202 No alternative to these rules may be approved under Rule 6200 which would contravene any Vermont state or federal law or regulation other than these rules.

6203 The school board shall submit the following when requesting a variance:

1) Evidence that strict compliance with these rules could entail practical difficulty, unnecessary cost or, hardships or is otherwise unwarranted.

2) Evidence that the alternative specification or procedure meets the intent of the rule.

6204 The State Board after opportunity for hearing shall grant, deny or modify the request for a variance stating its reasons therefor and any conditions attached thereto. The Commissioner shall notify the applicant in writing of the action of the State Board.

6300 General Rules For Pre-qualification Of Bidders On Contracts Over $500,000

6310 Statutory Authority: 16 V.S.A. 559(b)

6320 Policy And Procedure

To ensure that school construction projects are bid through a fair and open process and bids are received from responsible and qualified contractors.

6330 Cross References

State Board Rules: 6000 Series - School Construction and 9000 Series Public Bids

6340 Pre-qualification Procedures

A school board shall determine which contractors are eligible to bid on school construction contracts in excess of $500,000. For the purpose of these rules an award to a general contractor shall constitute one contract. The prequalification procedures are as follows:

1. The board shall establish prequalification criteria for the contract in question.

2. The board shall publicly advertise at least 60 days prior to proposed bid opening that it has established prequalification criteria a bidder must meet and that it is seeking interested bidders to apply for prequalification.

3. The advertisement shall include:

   (a) A brief description of the project for which the contract will be bid

   (b) When bids are anticipated to be opened.

   (c) When and where prequalification statements are to be received.

   (d) Notice that prequalification statements are to be submitted on the AIA - A305 1986 forms or most recently amended form AIA-A305, with attachments thereto, if necessary, to respond to additional pre-qualification criteria established by the board.

6341 Determination Of Pre-qualification

The school board shall review each applicants ability to perform the work required and shall prequalify an applicant if the board finds that the applicant:

(a) maintains a clear and stable organizational structure;

(b) holds licenses and/or registrations appropriate to the work to be performed;

(c) has sufficient experience or expertise with related projects;

(d) has sufficient financial capacity;

(e) does not maintain a current construction load that would interfere with its ability to perform the work;

(f) has positive references from credible and knowledgeable sources; and

(g) meets any other lawful criteria established by the school board specific to the qualifications of the contractor to

perform the work required in a timely and adequate manner.

6342 Notice To Applicants

6342.1 After determining which applicants are prequalified, the school board shall notify all applicants of whether they are eligible to bid on the contract. The notice shall be in writing and shall be issued at least 30 days prior to the proposed bid opening.

6342.2 The notice sent to applicants determined to be eligible to bid on the contract shall also contain information on the availability of plans and specifications and when and how bids are to be submitted.

6400 Construction Management

6410 Statutory Authority: 16 V.S.A. §559(d)

6420 Policy And Purpose

To ensure that school construction projects using a construction management approach are bid through a fair and open process.

6430 Definitions

" Construction manager" means, for the purpose of these rules, a person or entity providing some or all of the following services for a fee to a school board throughout a school construction process:

(a) general advice;

(b) value engineering;

(c) project scheduling;

(d) cost estimating;

(e) project management; and

(f) document preparation, including bids and contracts.

"Construction management" means, for the purposes of these rules, the services provided by a construction manager.

6440 Bidding For Construction Management Contracts

Contracts for construction management, except as provided in rule 6441, are not subject to the terms of 16 V.S.A. §559. However, nothing herein shall be construed to prohibit a school board from placing a contract for construction management out to bid.

6441 Construction Management/Constructor

When the school board wishes to offer a contract for construction management where the construction manager also serves as the constructor, a school board shall comply with the pre-qualification and bidding procedures contained in 16 V.S.A. §559. For the purpose of these rules a "constructor" means a person or entity which assumes a contractual obligation in exchange for a guaranteed price for the labor and materials for a school construction project.

6450 Pre-qualification Procedures

Construction management contracts subject to Rule 6441 above, shall meet the pre-qualification requirements of Rules 6340.

6460 Request For Construction Management Proposals

Upon completion of the prequalification process pursuant to Rule 6340, the school board shall submit to the prequalified construction managers a request for proposals that requests the following information:

1. a list and description of services to be provided;

2. resumes of key personnel;

3. a fixed fee for construction management services with a list and detailed breakdown of each item;

4. a fixed fee for construction services to cover overhead and profit; and

5. a fixed fee for general conditions with a list and detailed description of each item Nothing herein shall prohibit a school board from requesting proposals that include a percentage fee.

Nothing herein shall prohibit a school board from requesting proposals that include a percentage fee.

6470 Bid Process For Construction Manager

The school board shall adhere to the requirements of 16 V.S.A. §559 when awarding a contract pursuant to Rule 6441 to a construction manager.

6471 Bid Openings

Opening and evaluation of all bids for construction management, shall be conducted at a warned school board meeting.

6480 Bid Process Under Construction Management

Where a school board has contracted with a construction manager, the board remains responsible for public bidding pursuant to 16 V.S.A., §559 for all purchases or contracts exceeding $10,000 for school building construction, improvements, materials, supplies, equipment. All bids shall be opened and reviewed at a warned school board meeting.

6490 Miscellaneous Provisions

6490.1 The school board and construction manager may enter into a preconstruction agreement which establishes a Guaranteed Maximum Price (GMP) at the time working drawings and specifications are sufficiently complete.

If the cumulative result of the bidding process for the total scope of the project plus general conditions, and fixed fees is less than the GMP, 100% of the savings will be returned to the local school board. If when bids are received and the project cost exceeds the GMP, the school board may:

1. reject any and all bids and solicit new bids for any portion of the work to be done unless otherwise provided by 16 V.S.A. §559;

2. renegotiate the GMP; or

3. require performance under the GMP agreement.

6490.2 No labor or cost related to the services to be performed by the construction manager shall be included in the subcontractor or material suppliers bid packages.

7000 RELATIONSHIP WITH PUBLIC, OTHER AGENCIES, AND INSTITUTIONS 9/1981-6/1985

7100 Interstate Agreements

7110 Personnel Qualifications
Interstate Agreement on Qualification of Educational Personnel 16 VSA §2041-2062. (See also Series 5000 of this manual, titled School Personnel.)

7120 Vermont – New Hampshire Interstate Compact
16 VSA §771-784

7130 Vermont – New York Interstate Compact
16 VSA Chapter 16

7200 Relationship with Other Vermont State Agencies

7210 Department of Motor Vehicles, statutes related to school buses and drivers
23 VSA §1242

7220 The Departments of Highways, Public Safety, Labor and Industry, and Health have regulations pertaining to public schools. Some discussion of these appears in the Vermont Department of Education booklet, "*Planning Educational Environments"* (See 6104 above). The complete regulations may be obtained from the respective agencies. The Agency of Environmental Conservation enforces Health Department regulations and the Department of Labor and Industry enforces safety regulations.

7230 University of Vermont, Educational Television
16 VSA §2801-2805

7240 Vermont State Colleges – Nursing Education
16 VSA §2635

7260 Education Building Finance Agency
16 VSA §3851-3862

7270 The Higher Education Planning Commission is established by executive order of the governor to plan and coordinate higher education in the state. The Commissioner of Education serves on the Commission.

7280 Advisory Councils

7300 Relationship with Other Educational Institutions and Agencies

7310 Post-Secondary Educational Institutions

7311 Approval: 16 VSA §174. See also 2240 of this manual.

7312 Records: 16 VSA §175. See also 2244 of this manual.

7320 Recognized Accrediting Agencies

Certain regional agencies have been recognized by the State Board of Education for accrediting purposes:

New England Association of Schools and Colleges
Burlington, Massachusetts

Middle States Association of Colleges and Schools/ Commission on Higher Education
Philadelphia, Pennsylvania

Northwest Association of Schools and Colleges
Seattle, Washington

Southern Association of Colleges and Schools – Commission on Colleges
Atlanta, Georgia

Western Association of Schools and Colleges – Accrediting Commission for Senior Colleges
Oakland, California

North Central Association of Colleges and Schools
Chicago, Illinois

Office of Overseas Schools, Department of State
Washington, D. C.

Department of Education, Northern New England Conference of Seventh Day Adventists
Portland, Maine

Diocesan School Board
Burlington, Vermont

National Association of Trade and Technical Schools
(For non-degree granting purposes only.)
Washington, D. C.

7330 Private Schools Designated as Public Schools - 16 VSA §827

8100 SCHOOL LUNCH PROGRAMS

8100 School Lunch Programs

Statement of Purpose

The purpose of school lunch programs is to safeguard the health and well being of Vermont's children, to assist the schools to serve nutritious lunches to children each school day, and to teach and model good nutrition habits in the schools.

8110 Statutory Authority: 16 VSA §1262b, 42 U.S.C. §1751 et seq.

8111 Grants from state or federal funds to school boards pursuant to 16 VSA §1262a(a) shall be awarded in a manner consistent with the National School Lunch Act as amended from time to time and its accompanying regulations found in Title 7 of the Code of Federal Regulations as amended from time to time.

8112 Each recipient school board as that term is defined in 16 VSA §1261a shall adopt, maintain and update as necessary a policy on the provision of school lunches in accordance with these rules and state and federal law and regulations.

8113 In the 1988-1989 school year, and as federal requirements are amended, the Commissioner shall provide to each recipient school board a copy of the relevant federal regulations governing school lunch programs. In addition, in the 1988-1989 school year and as federal requirements are amended, the Commissioner shall provide to each recipient school board a summary of federal eligibility requirements for school lunch programs, as well as requirements relating to confidentiality, non-discrimination, nutritional standards, and financial accountability.

8120 In any fiscal year, no more than ten percent of state funds made available for school lunch programs pursuant to 16 VSA §1262a(a) may be awarded for the purchase of equipment for school lunch programs. The remainder of state funds must be awarded for the operation of school lunch programs on a per meal basis. Requests for funds from the state board to purchase equipment for school lunch programs shall be made on a form developed by the Commissioner and awards made on the basis of criteria developed by the Commissioner. Such criteria shall be designed to equitably distribute available funds to programs most in need and at minimum shall require consideration of the following factors:

(1) Percentage of children eligible for free and reduced-price meals,

(2) Condition of existing equipment,

(3) How new equipment will improve the food service program, and

(4) Local matching funds available.

8130 All prior state board regulations governing the operation of school lunch programs are hereby repealed.

Child and Adult Care Food Program

8200 Approval of New Family Day Care Home Sponsors

8210 Purpose

The purpose of the Child and Adult Care Food Program (CACFP) is to ensure that nutritious meals are available to children and adults in day care settings. Federal regulations require that home day care providers participate in the program through a sponsoring organization. This structure assures that home day care providers receive the support, training and monitoring needed to accomplish the goals of the program.

Sponsoring organizations can best provide these services under the following conditions:

The organization has sufficient administrative capacity to meet accounting, record keeping and monitoring requirements.

A variety of support and training services are made available to providers which can enhance the home day care experience for children and ensure compliance with day care and food program regulations.

Sponsoring organizations have specific areas to serve so that competition among organizations for homes does not lead to interruptions or duplication of service or poor compliance with program regulations and day care providers have one local organization to deal with.

8220 Process

Any new organization applying for sponsorship must demonstrate a need for services in the requested geographic area.

Therefore, the approval process for new sponsors of family day care homes in the CACFP shall be as follows:

8221 A potential new sponsor shall submit a letter of request for an application to the Commissioner of Education (hereinafter "Commissioner") which delineates the area the organization proposes to serve.

8222 The Commissioner or his or her designee shall inform current sponsors within ten days that the letter of request for an application has been received.

8223 The applicant organization shall complete a CACFP proposal (hereinafter "proposal"), on a form provided by the Commissioner, which includes the following:

a. A list of at least 40 non-participating home day care providers who are located in the service area described in the letter of request and who have indicated that they wish to enlist in the program, as well as copies of the 40 providers' day care registrations. In addition, the applicant organization must demonstrate that the number of day care homes they have potentially recruited represents a sufficient number to make a viable sponsorship in light of the proposed structure of the applicant organization.

b. Board of Directors information including names, titles, and functions of members, proof of the organization's tax exempt status, and copies of previous year's audit summary.

c. Documentation of financial and administrative capability for program operations including information about the history of the organization's management of other federal programs, if any.

d. A management plan describing employee names, specific job descriptions, an organizational chart, and a program budget.

e. A description of general employment policies including office hours, hiring and termination of employees, non-discrimination, and employee salary and benefit levels.

f. A listing of proposed CACFP policies including provider monitoring and corrective action, non-discrimination, hearing/appeals procedures, meal disallowance, monitoring and corrective action.

g. A plan for outreach activities.

h. A plan for training both staff and providers.

8224 Upon receipt of notification that a letter of request for an application has been submitted, the Commissioner shall notify all potentially affected sponsors in the area described by the applicant. Any such sponsors may submit documentation regarding recruitment history in the proposed area and the reasons for failure to enroll the non-participating day care homes. This information shall be considered when the proposal is evaluated.

8225 The proposal shall be reviewed for completeness. If any item is incomplete, the applicant shall be informed within 15 days, and the missing/incomplete information requested.

8226 Once a complete proposal has been submitted, it will be evaluated by a team of three reviewers designated by the Commissioner. If the proposal meets the criteria for approval, the organization shall be sent an agreement packet to complete.

8227 The applicant and potentially affected sponsors shall be notified of approval or disapproval within 30 days of receipt of a completed proposal.

8230 Criteria for Approval

Approval for a new day care home sponsor shall be based on the applicant successfully documenting the following:

8231 The needs assessment demonstrates a sufficient number of non-participating home providers in the proposed area to warrant an additional sponsor.

8232 The applicant demonstrates the administrative capacity to maintain the accounts necessary to receive federal funds. Administrative capacity includes bookkeeping systems that meet federal reporting requirements, office support and equipment, and previous experience in managing public funds.

8233 The applicant organization has sufficient personnel to provide the training, monitoring, and record keeping required by the program.

8234 The applicant organization demonstrates a thorough understanding of the requirements of CACFP and demonstrates competency in menu planning, files management, day care licensing regulations, the day care registration process, and provider review schedules.

8235 The applicant organization offers additional services or benefits to the home care providers they propose to sponsor and provides information about how these services improve the day care climate, offer more support for children or enhance the likelihood of compliance with regulations.

8240 Establishment of New Territories

In approving a new sponsor, the Commissioner shall outline the territory to be served either by using the service area described in the application or a portion of it depending on the documentation of need. Once this new territory has been defined, the following process shall be used to realign sponsor areas to re-establish exclusive territories.

8241 Beginning ten days after the notice of approval of the application, newly recruited homes in the new sponsor area shall be sponsored by the new agency.

8242 Transfer of participating homes from an existing sponsor to the appropriate new sponsor shall occur at the start of the next fiscal year as part of the sponsor renewal process.

8243 Should the number of homes to be transferred exceed 25, the transfer may be completed at the beginning of the third federal fiscal year at the discretion of the sponsor from whom the homes will be transferred.

8244 The new sponsoring organization and other organizations affected by the approval may agree to a mutually acceptable alternative timetable for transfer of homes, not to exceed two years, so that administrative funds and staffing levels are adjusted gradually.

8250 Appeals Process

An organization whose application for sponsorship is denied or one affected by the approval of a new sponsor shall be given the opportunity to appeal the decision.

8251 A written notice of the action taken by the Commissioner shall be sent to the applicant and all affected organizations.

8252 If an organization wishes to appeal the decision, it shall request an appeal in writing within 30 days of the notice of action letter.

8253 The hearing officer shall be the Commissioner of Education or his/her designee.

8254 The appeal procedure shall be as set forth in Rule 1232 of the Vermont State Board of Education Manual of Rules and Practices.

8260 Designation of Day Care Home Sponsors and Territories

The following day care home sponsors, until amended in accordance with the procedures set forth herein, shall serve exclusively the following service areas:

a. Bennington-Rutland Opportunity Council: Bennington and Rutland Counties

b. Central Vermont Community Action Council: Orleans County, Caledonia County with the exception of the Town of Hardwick, Washington County, Orange County, and Windsor County from Bridgewater to Woodstock and all north of Hartland.

c. Childcare Resources and Referral Service: Chittenden County with the exception of the Town of Milton.

d. The Family Center: Franklin and Grand Isle Counties and the Town of Milton.

e. Lamoille Family Center: Lamoille County and the Town of Hardwick.

f. Mary Johnson Children's Center: Addison County

g. Windham Child Care Association: Windham County, Windsor County north to Plymouth, Reading, West Windsor and Windsor inclusive.

9000 PUBLIC BIDS

9001 Definitions

9001.1 "Publicly advertise or invite" means, for the purposes of 16 VSA §559(a), to seek bids on goods or services through written communication mailed, personally delivered, published in a newspaper of general circulation or printed in a newsletter or trade publication. The written communication need not contain all the bid specifications but may generally describe the item to be bid upon and provide information on how further uniform written specifications may be obtained.

9001.2 "Through no fault of its own" means, for the purposes of 16 VSA §559(f) one or more of the following:

(a) Fewer than three bidders are reasonably available to bid on the goods or services, or fewer than three bids were received after reasonable advertisement and/or invitation were attempted.

(b) The price of a particular product or service is fixed by corporate policy.

(c) Any other reason the public bid procedure set forth in 16 VSA §559 cannot be complied with, as approved by the Commissioner, not because of a lack of effort by the board but because of circumstances particular to the nature of the product or service or the vendor or supplier.

9001.3 "Fair and public process" means, for the purposes of 16 VSA §559(f) that the board documents why advertising or inviting three bids would be or has been futile and documents why the process it proposes or attempted for seeking bidders offers or offered a reasonable opportunity for vendors or suppliers to be put on notice of the request for bids without intentional favoritism toward any potential or actual bidder.

9001.4 "Newspaper of general circulation" means a newspaper of record as approved by the Secretary of State having general circulation in the part of the state in which the school district is located.

9001.5 "Lowest responsible bid or bids conforming to specifications" as contained in 16 VSA §559(c), means both the amount of the base bid and any alternate bids responsive to priorities set forth in the bid specifications.

9002 Waiver of public bidding requirements

9002.1 The Commissioner may grant exceptions to the provisions of 16 VSA §559 where the board seeking the exception demonstrates that it is unable to comply with the bidding procedure through no fault of its own and it has proposed an alternative method of keeping costs down through a fair and public process.

9002.2 A board seeking such an exception shall do so in writing to the Commissioner and shall fully describe the reasons it cannot comply with the requirements of 16 VSA §559 and the process it proposes to substitute for such requirements. No purchase or contract may be entered into until such time as the Commissioner has approved the purchase or contract. The Commissioner shall respond in writing to the request for an exception within ten working days after receipt of the request. The response shall grant or deny the request or ask for further information.

9100 NET COST PER PUPIL

9101 Statutory Authority

A §825, Maximum tuition rate, calculated net cost per pupil defined

9102 Federal and State Handbooks: Incorporated by Reference

The definitions and classification of revenues, expenditures, and programs contained in *Financial Accounting for Local and State Systems,* published by the U.S. Department of Education, and *Handbook for Financial Accounting of Vermont School Systems: Financial Code Classification System,* published by the Vermont Department of Education, are hereby incorporated by reference.

9103 General Rule

Net Cost per Pupil for purposes of regular education elementary and secondary tuition shall be calculated as the sum of:

(a) Net Regular Education Elementary/Secondary Current Instructional Cost per Pupil, and

(b) Net Regular Education Elementary/Secondary Facility Acquisition and Construction Cost per Pupil.

9104 Definitions

9104.1 Net Regular Education Elementary/Secondary Current Instructional Cost per Pupil

Net Regular Education Elementary/Secondary Current Instructional Cost per pupil means:

(a) Net Regular Education Elementary/Secondary Current Instructional Cost

(b) Divided by the Average Annual Full Time Equivalent Student membership in the Regular Education program.

9104.2 Net Regular Education Elementary/Secondary Current Instructional Cost

Net Regular Education Elementary/Secondary Current Instructional Cost means:

(a) Elementary/Secondary Current Instructional Expenditures less:

(1) Special education expenditures eligible for reimbursement or recovery through the special education funding formula or other means.

(2) Area vocational-technical center expenditures.
(3) Expenditures for transportation to and from school for resident students. Co-curricular transportation expenditures are included as an instructional cost.

(b) Reduced by revenues:
(1) From local sources that serve to offset some or all of the cost of providing a service, to the extent that the corresponding expenditures are included in the Elementary/Secondary Current Instructional Expenditures.
(2) From state and federal sources that must be used for a categorical or restricted purpose, to the extent that the corresponding expenditures are included in the Elementary/Secondary Current Instructional Expenditures.

9104.3 Elementary/Secondary Current Instructional Expenditures

Elementary/Secondary Current Instructional Expenditures means all Current Operating Expenditures in that year to provide direct instructional programs and supporting services for elementary/secondary students.

Specifically excluded are expenditures for:
(a) Non-instructional programs, such as food service
(b) Programs that are intended to be largely self-supporting (enterprise) operations
(c) Adult/continuing education programs
(d) Community Services
(e) Facility Acquisition and Construction Services

9104.4 Current Operating Expenditures

Current Operating expenditures means all expenditures of the year for salaries and wages, employee benefits, purchased services, and supplies and materials. For purposes of calculating Net Cost per Pupil, expenditures for equipment shall be treated as a Current Operating Expenditure.

9104.5 Net Regular Education Elementary/Secondary Long-term Facility Cost per Pupil

Net Regular Education Elementary/Secondary Long-term Facility Cost per Pupil means:
(a) Net regular Education Elementary/Secondary Long-term Facility Cost

(b) Divided by the Average Annual Full Time Equivalent Student membership in the Regular Education Program.

9104.6 Net Regular Education Elementary/Secondary Long-term Facility Cost

Net Regular Education Elementary/Secondary Long-term Facility Cost means:

(a) Elementary/Secondary Long-term Facility Cost less expenditures for:
  (1) Area vocational-technical centers.
  (2) Maintenance and payments of principal and interest for buildings used exclusively for boarding students.
(b) Reduced by revenues that serve to offset some or all of the cost of providing a school facility, to the extent that the corresponding expenditures are included in the Elementary/Secondary Long-term Facility Cost, from:
  (1) Local, state, or federal sources.
  (2) Proceeds of long-term or short-term borrowing.

9104.7 Elementary/Secondary Long-term Facility Cost

Elementary/Secondary Long-term Facility Cost means all expenditures of the year for:
(a) Acquisition of land and buildings.
(b) Remodeling buildings.
(c) Constructing buildings and additions to buildings.
(d) Initially installing or extending service systems and other built-in equipment.
(e) Site improvements.
(f) Principal and interest payments on long-term debt to fund such expenditures.

Specifically excluded are expenditures for:
(a) Non-instructional programs, such as food service
(b) Programs that are intended to be largely self-supporting (enterprise) operations.
(c) Adult/Continuing education programs.
(d) Community Services.

9104.8 Average Annual Full Time Equivalent Student Membership

Average Annual Full Time Equivalent Student Membership is the Average Full Time Equivalent Student Membership over the period of the entire school year.

9104.9 Average Full Time Equivalent Student Membership

Average Full Time Equivalent Student Membership means the sum of the Full Time Equivalent Student Membership for each day divided by the number of days in the period. Average Full Time Equivalent Student Membership for any month is equal to the total Full Time Equivalent Student Membership for each day that school is in session during that month, divided by the number of days school is in session during that month. Average Full Time Equivalent Student Membership adjusts the Full Time Equivalent Student Membership count for fluctuations that occur during the period.

9104.10 Full Time Equivalent Student Membership

Full Time Equivalent Student Membership means Student Membership stated as the equivalent number of full-time students. Full Time Equivalent (FTE) Student Membership adjusts the Student Membership count for part-time students, students who spend part of the day in another school or program, and students who enter or withdraw from the rolls.

9104.11 Student Membership

Student Membership means the period of time a student's name is on the current roll of a class or school, while the school is in session, regardless of his or her presence or absence. A student is a member of a class or school from the date he or she enters until his or her name is withdrawn or removed from the rolls.

9105 Elementary/Secondary net costs

Separate amounts for the net cost per pupil shall be calculated for:

(a) Elementary grades (K-6)

(b) Secondary grades (7-12)

9106 Annual Worksheet

Annually, on or before December 1, the Department shall provide a worksheet for each school district to assist in calculating net cost per pupil.

9200 FULL TIME EQUIVALENT ENROLLMENT OF PUPILS

9200.1 Statutory Authority: 16 VSA §4001(1)

9200.2 General Definition

For the purposes of 16 VSA §4001(1), "full-time equivalent enrollment of pupils" for K-12 pupils means enrollment for the minimum hours per week in each grade as required by Rule 2311.4. No pupil shall be counted as more than one in full-time equivalent enrollment.

9200.3 K-12 Pupils Attending Less than Full-time

For K-12 pupils attending school for fewer than the minimum number of hours required per week, the percentage of full-time equivalent enrollment in each grade shall be calculated by applying the ratio of actual hours such pupils are enrolled per week to the minimum hours per week required by Rule 2311.4 for that grade.

9200.3.1 A student enrolled as a home study student pursuant to 16 VSA §166b who is not a part-time student enrolled in academic programs, but who participates in one or more co-curricular or extracurricular activities at a public school, shall be counted as .03 of a full-time equivalent student for each activity in which he or she participates. For purposes of this provision, the reporting period shall be from beginning of the 41st day of a school year to the end of the 40th day of the following school year.

9200.4 Repealed 7/5/08 see Rule 2600 Prekindergarten Education

9200.5 Adult Diploma Program/Adult Pupils

(a) For pupils enrolled in the Adult Diploma Program, the percentage of full-time equivalent enrollment shall be calculated by applying the ratio of per-pupil cost to the district to the General State Support Grant.

(b) For all other adult pupils who are not enrolled full time, the percentage of full-time equivalent enrollment shall be calculated by applying the ratio of the number of hours enrolled per week to 27.5 hours.

9200.6 Collection of Data

The information required to calculate full-time equivalent enrollment shall be submitted to the Commissioner in the Average Daily Membership Data collection no later than November 15 of each year.

May 1, 2001

9300 ALLOWABLE AND EXTRAORDINARY TRANSPORTATION EXPENDITURES

9301 Statutory Authority

Subsection 22 (c) and (d) of Act 60 of the 1997 Session

9302 Definition of Allowable Transportation Expenditures

9302.1 For the purposes of Subsection 22 (c) of Act 60 of the 1997 Session, "allowable transportation expenditures" means the cost of transporting students on one trip per school day to and from the school of enrollment. Allowable transportation expenditures do not include expenditures for transporting students participating in such curricular activities that take place off the school grounds as work placement or technical education programs, or for transporting students participating in such co-curricular or extracurricular activities as field trips or athletic competitions. Allowable transportation expenditures are net of any revenues received for transporting students to and from school. Allowable transportation expenditures do not include any expenditures which are eligible for reimbursement or payment elsewhere.

9302.2 Depreciation of school buses is an allowable transportation expenditure. Depreciation equals one-seventh of the purchase price of a bus per year for seven years. Only the portion of depreciation attributable to the transportation of students on one trip per school day to and from school may be claimed as an allowable transportation expenditure. (Methods for separating eligible from ineligible portions of transportation expenditures are detailed in the *Handbook for Financial Accounting of Vermont School Systems*, Appendix A, Function Code 2700.)

9302.3 Depreciation of a school bus begins in the year a bus was purchased new. A bus more than seven years old in the Fiscal Year being reported is considered fully depreciated.

9302.4 In a bus leasing arrangement concluding with the district owning the buses at the end of the lease, the portion of the lease applied to the purchase price is considered an installment purchase rather than a rental. The district must establish the Fair Market Value (FMV) of the buses at the time of the lease. Depreciation is calculated as one-seventh of the FMV per year for seven years.

9303 Application and Award

A school district shall be reimbursed under this section based on a completed transportation reimbursement worksheet prescribed by and submitted to the Commissioner as part of the Annual Statistical Report of Schools on or before August 15 of the current fiscal year. Transportation expenditures shall be incurred in one fiscal year, reported in the next fiscal year, and reimbursed in the following fiscal year.

9304 Definition of Extraordinary Transportation Expenditures

9304.1 For the purposes of Subsection 22 (d) of Act 60 of the 1997 Session, "extraordinary transportation expenditures" are those reimbursable transportation expenditures reported in the Annual Statistical Report of Schools which for any school district:

(a) exceed the threshold percentage, and
(b) are due to unavoidable and unusual circumstances related to the location of the school building within the district; the topographical features of the district; the need to transport tuitioned students outside the district; the condition of the roads; or other unusual circumstances.

9304.2 For the purposes of this rule, the "threshold percentage" is determined by calculating each district's allowable transportation expenditures as a percentage of that district's General State Support Grant (GSSG) net any GSSG funds contributed directly to a technical center on that district's behalf. The threshold percentage is the percentage at the 96th percentile of districts included in the calculation. Only districts with allowable transportation expenditures are included in the calculation.

9305 Application and Award

9305.1 The Commissioner shall announce the threshold percentage on or before November 1 of the reporting fiscal year based on the reported transportation figures. The threshold percentage may be adjusted based on data corrections submitted through January 15 of the reporting fiscal year as provided for in 16 V.S.A. Sec. 4030 (b).

9305.2 A district with reimbursable transportation expenditures exceeding the announced threshold percentage may apply to the Commissioner by December 15 of the reporting fiscal year. The application shall describe the extraordinary nature of the expenditures in relation to Rule 9304.1 (b). The Commissioner of Education shall inform districts of the amount determined to be extraordinary transportation expenditures by February 1. Reimbursement shall be made in the fiscal year following the Commissioner's determination.

9305.3 The Commissioner shall award an amount equal to transportation expenditures in excess of the threshold percentage determined to be extraordinary transportation expenditures. If the amount of expenditures eligible for reimbursement statewide exceeds the funds appropriated for this purpose, funds shall be distributed proportionally.

9306 Effective Dates

9306.1 The allowable transportation aid provisions of this rule take effect on July 1, 2001.

9306.2 The extraordinary transportation aid provisions of this rule take effect on July 1, 2002.

9500 REPORTING STUDENTS FOR WHOM ENGLISH IS NOT THE PRIMARY LANGUAGE

9501 Each school district shall report, as part of its average daily membership count, pursuant to 16 VSA §4010(e), the number of students for whom English is not the primary language. A student shall be determined to be a "student for whom English is not the primary language", for purposes of this rule if:

(a) the student
  (i) has a primary or home language that is not English as indicated on the State of Vermont, Primary/Home Language Survey form, and
  (ii) within the preceding twelve months has been assessed for and found to be limited English proficient (LEP) by a qualified professional using an appropriate English as a second language assessment including but not limited to, the IDEA proficiency test, Language Assessment Scales, or the Maculaitis Assessment; or

(b) the student after having been identified in accordance with subparagraph (a) continues to be eligible for and receive ESL services in the district. Students in this subparagraph may be counted for a period not to exceed five years from the date of the assessment described in subparagraph (a); or

(c) the student has received over five years of ESL services but remains LEP because in the opinion of a qualified professional, he or she has not demonstrated English proficiency in all basic skill areas, as measured by multiple means, and as a result, has not demonstrated acceptable performance in content subjects; or

(d) the student is, in the opinion of a qualified professional, unable to be assessed through the assessment mechanisms set forth in subdivision (1)(a) due to non-English proficiency.

9502 A student shall not be determined to be a "student for whom English is not the primary language" if:

(a) the student although otherwise qualified to receive ESL services, is not legally entitled to receive such services because the student is a foreign exchange student or for other legally cognizable reasons; or

(b) the student, because of successful completion of ESL services, is English proficient in all basic skill areas, as measured by multiple means, and demonstrates acceptable performance in content subjects.

9503 For purposes of this rule, until June 30, 2000, "qualified person" means a person who has an understanding of first and second language acquisition, understands the cultural issues associated with second language acquisition, and has the ability to select, administer, and interpret appropriate procedures for identification, screening, assessment and monitoring of progress of ESL students. On or after

July 1, 2000, a qualified person is one who holds an English as Second Language (ESL) K-12 endorsement.

June 29, 1991

10000 COORDINATION OF SERVICES TO CHILDREN AND ADOLESCENTS WITH A SEVERE EMOTIONAL DISTURBANCE*

10100 Statement of Purpose

These rules are jointly promulgated by the Vermont Departments of Mental Health and Mental Retardation (DMHMR) and Social and Rehabilitation Services (SRS) and the Vermont State Board of Education to implement the provisions of Act 203 of the 1990 Adjourned Session. It is the intent of these rules that improved coordination among the three agencies and the local service providers will result in improved services for children and adolescents with a severe emotional disturbance.

Nothing in the provisions of this chapter shall be construed to grant an entitlement to any child or adolescent with a severe emotional disturbance to receive any educational residential, mental health or other service until and unless the general assembly further provides that such children and adolescents or any subgroup thereof are so entitled.

10200 Statutory Authority

33 VSA §4305(b)

10300 Definitions

For the purposes of these rules, a “child or adolescent with a severe emotional disturbance” means a child or adolescent who meets the criteria set forth in 33 VSA §4301(3) and who is in need of coordinated services. For the purposes of these rules, a “child or adolescent with a severe emotional disturbance” shall be referred to as an “eligible child”.

For the purpose of these rules, the “lead agency” is that agency which has the responsibility for the coordination of (1) the assessment of the eligible child and (2) the development of the coordinated service plan.

10400 Guidelines for Local Interagency Team Procedures

Each Local Interagency Team (LIT), with public participation, shall develop written procedures for interagency collaboration concerning eligible children. “Public participation” should, at a minimum, include at least one public meeting with notice thereof in a newspaper of general circulation in the region. Each Local Interagency Team shall develop procedures in a step-by-step format in the areas of training interagency personnel, interagency collaboration, case

*Renumbered for the reason of conflicting with the SBE Manual Rules numbers.

management, and provision for notice to parents, guardians, and involved agencies. The following rules are guidelines for suggested procedures that shall be submitted on or before February 1, 1992 by the Local Interagency Teams to the advisory board established pursuant to 33 VSA §4303 and then to the Commissioners of DMHMR, SRS, and Education for approval.

10401 Training of Interagency Personnel

The interagency team procedures shall provide for the training of interagency personnel in the following subjects:

A. the rationale for coordinated services;

B. the development and implementation of coordinated service plans;

C. the responsibility of personnel for implementation of the procedures and provision of coordinated services generally, and

D. the procedures and responsibilities of all agencies involved in the provision of services to eligible children.

10402 Lead Agency Assignment

A. In the case of an adjudicated child on the SRS caseload, SRS shall be the lead agency.

B. In the case of non-adjudicated child where the presenting problems are primarily educational in nature, the lead agency shall be the local school district.

C. In all other cases, the community mental health agency shall be the lead agency.

D. The lead agency shall, where necessary, arrange for case management. Local procedures for fixing case management responsibility shall, generally, follow the same criteria as that which is used for determining lead agency.

10403 Interagency Collaboration

The interagency team procedures shall provide for the referral and assessment of eligible children; development of coordinated service plans; revision and annual review of such plans; and time frames for interagency collaboration as follows:

A. Referral

1. A referral for a coordinated service plan may be made by a parent, guardian, service provider, educator or advocate.

2. Written consent from the child's parent or guardian shall be obtained before the referral is accepted.

3. The procedures shall contain a clear designation of the agency or person to whom referrals are made and an explanation of how a referral is made.

4. A referral should be made under the following circumstances:

(a) a child appears to meet the definition of an eligible child; and

(b) the child is being served by a school, a community mental health agency or the Department of Social and Rehabilitation Services; and

(c) the child is in need of coordinated services.

B. Assessment

Sufficient information shall be gathered through a documented process to determine if the child is eligible for a coordinated service plan. "Documented process" shall consist of a form supplied or approved by the State stating that the assessor has determined whether or not a child or adolescent has a severe emotional disturbance. The form shall also indicate that the assessor has reviewed evaluations and/or has observed the child or adolescent. No assessment shall be required if a child or adolescent, prior to the effective date of these regulations, has been determined to have a severe emotional disturbance or has been receiving coordinated services. The procedures shall identify the agency responsible for assessing the child.

C. Development of a Coordinated Service Plan

1. To the extent practicable, the development of the coordinated service plan shall involve the eligible child, the child's family, all relevant service providers and, in the case of an adjudicated child, the child's attorney.

2. The lead agency shall ensure that the plan is drafted.

3. The plan shall be signed by all the participants.

D. Annual review

The plan shall be reviewed at least annually.

E. The plan may be revised at the request of the child, the child's family, any relevant service providers, or in the case of an adjudicated child, the child's attorney and, to the extent practicable, all such persons shall be involved in any revision of the plan. The plan shall be revised whenever a significant change is made, and, wherever possible, should be revised prior to the change.

F. Time Frames

The following are recommended time frames for local procedures:

1. Eligibility for a coordinated service plan should be determined within 30 days of the receipt of consent.

2. A coordinated service plan should be developed within 60 days of determination of eligibility.

3. A decision as to revision of a coordinated service plan shall be made within 30 days of the request for revision or within 30 days of the date a significant change is made.

10404 Notification

A. Public Notification

Each Local Interagency Team shall develop and implement a procedure for notifying the public of the existence of the process for obtaining coordinated services. Public participation shall be documented in developing this procedure.

B. Service Provider Notification

Each Local Interagency Team shall notify local service providers of the process for eligible children to obtain coordinated services.

C. The notice required in subsections A and B above shall include an explanation of the existence, purposes and procedures of the Local Interagency Team.

D. Local procedures shall provide that the lead agency shall ensure notice to the child's parents, legal guardian, the child's attorney, in the case of an adjudicated child, and any relevant service providers regarding the following:

1. Determination of eligibility or ineligibility;

2. Development of coordinated service plans;

3. Revisions to a coordinated service plan;

4. Annual Review.

10500 Protection of the Right to Consent and of Confidentiality

Each Local Interagency Team shall develop written procedures for protecting the rights of eligible children and their parents and guardians concerning consent and confidentiality. These procedures shall include:

A. A policy requiring that the local interagency team regard all information received on a particular case as confidential and that no such information be disclosed without appropriate consent. Such policy shall be consistent with the policy and rules of the three individual agencies regarding confidentiality.

B. A form for parents or guardians to sign consenting to referral for a coordinated service plan.

C. A form for parents or guardians to sign releasing information to relevant service providing agencies.

10600 Dispute Resolution

A. Each Local Interagency Team shall develop a notice for parents, guardians and service providers describing procedures for dispute resolution. The notice shall include the following:

1. Local Interagency Team

Where the eligible child's planning team cannot reach consensus on a coordinated service plan or is unable to implement such a

plan, a referral may be made by any participating party to the Local Interagency Team for resolution.

2. State Interagency Team (SIT)

Where the Local Interagency Team is unable to resolve any of the issues set forth in subsection (A) (1) above, a referral may be made by the Local Interagency Team to the State Interagency Team for resolution.

3. Appeal Process

Where the State Interagency Team is unable to resolve a dispute concerning coordination among the various agencies, it shall inform all participating parties of the right to an appeal process. The appeal process shall consist of a hearing pursuant to Chapter 25 of Title 3. The hearing shall be conducted by a hearing officer appointed by the Secretary of the Agency of Human Services and the Commissioner of Education. Based upon evidence presented at the hearing, the hearing officer shall issue written findings and proposals for decision to the Secretary and the Commissioner. The Secretary and the Commissioner may affirm, reverse, or modify the proposals for decision.

4. Procedural Safeguards

Nothing in these rules shall be construed to limit any existing substantive or procedural protections of state or federal law or regulations.