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STATE BOARD OF EDUCATION
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Vermont State Board of Education
Manual of Rules and Practices

Series 1200 – State Department 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 statue 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:

Display Table

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 1/2 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 deem 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 option the interest of the public so requires.

1250 Discrimination

In order to provide equal education 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 child 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 children. See Rule 2362.2.6.

1252 Instruction for Homebound and Hospitalized Students.

(1) Pupils are eligible for instruction at home or in the hospital whenever they are unable to attend school for a period of ten consecutive school days or more because of pregnancy or a medical disability.

(2) Homebound or hospitalized elementary pupils shall receive instruction for no less than an average of six hours per week unless inconsistent with medical recommendations. Homebound or hospitalized secondary pupils shall receive instruction for no less than average of two hours per subject per week unless inconsistent with medical recommendations. Instructional materials shall be provided by the district of attendance.

1253 Hearings under Section 504.

Conflicts and alleged violations under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794 may be resolved through due process hearings in the same manner as for a special education due process hearing under Rule 2365.1.6. All the procedures for such a due process hearing according to Rule 2365.1.6, including the time limits of 16 VSA §2957, apply to Section 504 hearings. The hearing officer may award declaratory and injunctive relief but not damages,

costs or attorney's fees. In addition to, or in lieu of a due process hearing, a person may file a complaint with the Office of Civil Rights in Boston, MA.

1260 Waivers

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

History: Statutory Authority: 16 VSA Section 164(7)

Effective Date: Original effective date not provided.

AMENDED: August 5, 1994 Secretary of State Rule Log #94-59; May 9, 1997 Secretary of State Rule Log #97-14; January 25, 2006 Secretary of State Rule Log #06-002; August 24, 2006 Secretary of State Rule Log #06-023 1251 to 1253 ; June 10, 2010 Secretary of State Rule Log #10-011 1251 to 1253