
MEMORANDUM

TO: Prequalified Private Universal Prekindergarten Education Program Directors and Administrators, UPK Coordinators

FROM: Miranda Gray, CDD Deputy Commissioner
Chris Case, AOE Director, Student Support Services

SUBJECT: New Requirement: Ban on Suspension and Expulsion of Students Under Age Eight Enrolled in Prequalified Private UPK Programs

CC: Public School Superintendents, Principals, Special Education Directors

DATE: September 2, 2022

Purpose

This joint agency memo is intended to inform prequalified public and private Universal Prekindergarten Education (UPK) programs of the updated requirements that must be adhered to, effective June 1, 2022, as required by Act 35 of 2021 and Act 166¹ of 2022. The new laws disallow suspension and/or expulsion of any child under the age of eight in prequalified public and private UPK programs.

Background

On May 18, 2021, the Governor signed Act 35 into law. On June 1, 2022, the Governor signed Act 166 (S.283) into law. The Acts included amendments related to suspension and expulsion of students under the age of eight.

On August 3, 2022, the Secretary of Education released [New Requirement: Ban on Suspension and Expulsion of Students Under Age Eight](#) to Supervisory Union and Supervisory District superintendents. That memo articulated restrictions on the suspension and expulsion of students in PreK-Age 8 and is summarized below.

Restrictions on Suspension and Expulsion for Students in UPK-Age 8

In 2021, Act 35 added a section (d) to 16 V.S.A. § 1162, banning suspension and expulsion of students under eight years old, except in cases of imminent harm or danger to others. Prior to Act 35 of 2021, the statute did not make separate provisions for children under 8. This change took effect May 18, 2021. The full text of section (d) following the passage of Act 35 read:

Sec. 3. 16 V.S.A. § 1162 SUSPENSION OR EXPULSION OF STUDENTS (d)
Notwithstanding anything to the contrary in this chapter, a student enrolled in a public school who is under eight years of age shall not be suspended or expelled from the school; provided,

¹ Please note that Act 166 of 2022 is different from the Universal Prekindergarten Act 166 of 2014.

however, that the school may suspend or expel the student if the student poses an imminent threat of harm or danger to others in the school.

In 2022, Act 166 (S.283) introduced additional amendments to 16 V.S.A. § 1162, extending the above restrictions to approved independent schools and private prekindergarten education programs. The full text of the relevant updated language follows; the language added through the amendment is in italics:

Sec. 3. 16 V.S.A. § 1162 SUSPENSION OR EXPULSION OF STUDENTS (d)

Notwithstanding anything to the contrary in this chapter, a student enrolled in a public school, *approved independent school, or prequalified private prekindergarten program* who is under eight years of age shall not be suspended or expelled from the school; provided, however, that the school may suspend or expel the student if the student poses an imminent threat of harm or danger to others in the school.

Going forward, suspension and expulsion will not be allowed for students under age eight enrolled in public schools (including public prekindergarten), approved independent schools, and private UPK programs, except in the very rare occurrences when a student poses an imminent threat of harm or danger to others in the school.

Definitions of Suspension and Expulsion for Prequalified UPK Programs

The definitions of suspension and expulsion reflect longstanding practice in Vermont, beginning in 2018:

1. **In-program suspension** is the placement of a child in a specified supervised location (e.g., director's office, alternative classroom, other space in building) outside of their regular early childhood setting/classroom.
2. **Out-of-classroom/program suspension** is the removal of a child from their regular early childhood setting/classroom (off premises).
3. **Expulsion is the permanent removal** of a child from their regular early childhood setting/classroom. This permanent removal does affect the family's Act 166 tuition.

It is important to note that the unenrollment of a child from a private prekindergarten education program due to circumstances not directly related to the child shall not be considered an expulsion. An example of this may be non-payment of tuition paid for by the family.

Current Exclusionary Discipline Reporting Requirements

Current requirements for reporting suspension and expulsion for prequalified public and private UPK programs remain in effect until further notice. All public and private UPK programs must report exclusionary discipline within 5 school/program calendar days to school district partners and the Agency of Education UPK Accountability and Continuous Improvement System (UPK ACIS) Coordinator. Link to [UPK Suspension and Expulsion Reporting Form](#).

Building Bright Futures Council to Convene Suspension and Expulsion Work Group

S.283 also tasked Building Bright Futures to work with both “Agencies of Human Services and Education to define suspension, expulsion, and exclusionary practices in early childhood education settings and to establish best practices for supporting children who face such measures.” This work group will be convened September – December 2022 with the charge of making recommendations to Vermont’s legislature in January 2023.

Please note more guidance and professional development opportunities to support all UPK programs will be forthcoming.

Contact Information

If you have questions about this document or would like additional information, please contact:

Kate Rogers, Early Education Program Manager, Student Support Services, at kate.rogers@vermont.gov and/or Nicole Dubuque, CDD Policy Director, at nicole.dubuque@vermont.gov.