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## MEMORANDUM

TO: Special Education Administrators  
COPY: Superintendents, Principals, Independent School Headmasters  
FROM: Rebecca Holcombe, Ed.D., Secretary of Education *RH*  
SUBJECT: Placement of Students Eligible for Special Education  
DATE: December 9, 2016

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This memo is a reminder to special education administrators and LEAs about the responsibilities of LEAs with respect to placement of students with disabilities.

All students, including students with disabilities, need to leave school equipped with the skills and knowledge to thrive in our communities and economy. Students with disabilities are entitled to a free and appropriate public education in the least restrictive environment possible. Our goal for students with disabilities is to ensure that every student is placed in a school where s/he will experience positive social and academic relationships, receive appropriate support, and learn to the best of his/her abilities.

When a student is a member of a district that operates schools, typically IEP teams place students into the district's schools, unless extreme or unusual needs make a different placement necessary. When a district does not operate a school at some or all grade levels, and does not have a designation agreement with a receiving school, IEP teams work with families to make appropriate placement decisions. This memorandum is intended to clarify some of the rules and regulations that apply to the placement process, as well as suggest best practices for making *placement decisions* given these variables.

Again, the IEP team makes all *placement* decisions, in the least restrictive environment (LRE), based upon the individual needs for that student. The members of the IEP team include a parent, student (if applicable), LEA representative, special educator, and general education teacher. Others who know the student may be invited as needed. When discussing the student's placement in the least restrictive environment, the team must refer to the Vermont state regulations which provide specific guidance on student placement whether it is in an independent school, a publically funded high school, home schooling, or parent paid tuition to a public school outside of their district.

The following are the regulations generally pertaining to LRE in all of these environments:

**2364 Least Restrictive Environment (LRE)**

**2364.1 General LRE Requirements (34 CFR § 300.114)**

- (a) Each LEA shall ensure that:

- (1) A student eligible for special education services shall be educated with his or her nondisabled 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;
  - (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 student.

**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) 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 student's individual circumstances and not on the basis of the student'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 students 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 student 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.

For students living in a district *without a public school* at some or all grade levels, the process is the same. The IEP team makes all decisions regarding a student's placement in the least restrictive environment based upon the individual student's needs. If a parent does not agree with the IEP team decision, they have the right to file for due process pursuant to regulation 2365.1.6.2. The district has the responsibility for ensuring the conditions of LRE, and the district is liable if it does not do so. The following are the rules generally pertaining to students who are tuitioned:

**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 student eligible for special education, shall provide the student 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 students 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 student in the least restrictive environment, shall be determined by a student'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 students that a non-special education student 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 student placed at the same school.
    - (ii) If the parents select an independent school not generally attended by general education students, the LEA shall pay the actual educational costs associated with 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.

Placement decisions and processes must conform to the following procedures:

- Prior to placing a student at an independent school, the Local Education Agency (LEA) and Individualized Education Program (IEP) Team must determine that the independent school is approved for the student's disability category. An LEA is not permitted to place a student in an independent school if the school is not approved to provide an educational program specific to that student's disability. *T Special Education Rule 2363.10(b)(1)*.
- There **MUST** be an LEA representative at every IEP meeting. LEAs cannot designate a representative from the independent school to act as the LEA representative. *VT Special Education Rule 2363.3(a)(1)(iv)*
- IEP Teams must identify the personnel to provide specialized services to students. The provision for specialized instruction must be based on the needs of the individual student and not on the availability of services/staffing at the independent school. Independent schools can contract for necessary services specified in the IEP, and bill the district for the cost of these services.
- General education teachers cannot be identified as service providers on IEPs unless they also have a special education endorsement or are supervised by a special educator. *VT Special Education Rule 2363.7(d)* and *State Board Rule 2228.3.2*.
- Independent Schools must have a copy of the student's current IEP prior to the provision of services. *VT Special Education Rule 2363.9*
- LEAs must enter into a contract with the independent schools (prior to enrollment) identifying the specific special education services that will be provided, including the cost for the program. The Vermont Agency of Education sets a maximum allowable rate for each independent school that provides special education services. If justified, additional costs above the maximum allowable rate may be included, based on the individual needs of the student. *State Board Rule 2228.4.1*
- When an IEP Team places a student in an independent school serving a specific disability population(s), it is best practice for IEP Teams, with input from the independent school staff, to develop a reintegration plan for each student that outlines a plan for how to reintegrate the student into a more inclusive setting. The plan should identify the skills, behaviors, etc., that the student must develop in order to return to a more inclusive, less restrictive setting.
- "Day Treatment Program" is a location and cannot be considered a special education service. The service page on the IEP must identify the actual special education service (i.e. reading, math, speech/language) that the student is receiving at the independent school.