

# Vermont Special Education Procedures and Practices Manual

Adopted on:

March 24, 2022

---

Date

By:

Rutland City Public Schools

---

Local Education Agency (LEA)



## Preface: A Note to Local Educators

As a condition of funding under the Individuals with Disabilities Education Improvement Act of 2004 (IDEA), local educational agencies (LEAs) are required to establish written policies and procedures for implementing federal special education laws. This Vermont Special Education Procedures and Practices Manual has been developed to help LEAs meet this requirement.

LEAs are encouraged to adopt these model procedures and practices as written, with the “our LEA” language throughout referring to the obligations and responsibilities that they are assuming as a function of supporting special education laws. LEAs also have the option of using this document as a baseline for developing their own policies and procedures, although any deviation from the language in this document should be reviewed by an LEA’s legal counsel. Please note that adoption of this document meets the IDEA requirement to establish written policies and procedures but does not substitute for effectively implementing those policies and procedures.

The Vermont Agency of Education (AOE), in conjunction with the Vermont School Board Association, recommends that school boards adopt a policy statement which incorporates these model procedures and practices by reference, which will allow for future updates and revisions without having to go back to the local school board. The AOE recommends that any school board incorporating this manual upload a copy to their LEA’s website, in accordance with the requirements of IDEA. The AOE also asks that any LEA incorporating this manual maintain a copy of their signed attestation (Appendix A), which should be made available to the AOE as needed for monitoring purposes.

LEAs who chose to not incorporate this document must ensure that their locally developed policies and procedures minimally align with the content provided in this manual. If LEAs choose to develop their own policies and procedures, the AOE strongly recommends, as best practice, that LEAs post these locally developed policies and procedures on their website.

This document may also serve as a resource for parents/guardians and as a reference tool for educators seeking to promote understanding of and compliance with special education requirements. If you have any questions about the content of this document or how to use it, please contact the AOE’s Special Education Team at: [AOE.SpecialEd@vermont.gov](mailto:AOE.SpecialEd@vermont.gov).

## Table of Contents

Preface: A Note to Local Educators.....	2
Model Local Educational Agency Special Education Procedures and Practices.....	6

Full Educational Opportunity Goal .....	6
Free Appropriate Public Education .....	6
LEA Eligibility for IDEA B Funding .....	8
Child Find .....	8
Evaluation.....	9
Initial Evaluations.....	9
Reevaluation.....	11
Determination of Eligibility.....	11
Team Membership.....	12
Development, Review, and Revision of IEP .....	13
Individualized Education Program (IEP).....	13
Changes to the IEP.....	16
Related Services: Physical and Occupational Therapy.....	16
Extended School Year Services (ESY) .....	16
Post-Secondary Transition.....	17
Placement.....	17
Notice of Placement.....	18
Consent For Placement .....	18
Reintegration - General LRE Requirements.....	18
Residential Placement.....	20
Parental Consent.....	21
Parental Revocation of Consent.....	22
IDEA Part C (Birth to Age 3) to Part B 619 (Ages 3 through 5) Transition.....	23
Early Childhood Special Education Eligibility at Age Three .....	24

Early Childhood Special Education Eligibility from Age 3 until 6 <sup>th</sup> Birthday .....	24
Evaluation and Developmental Delay.....	25
Transition for Children Moving to Kindergarten .....	25
Transfer Pupils .....	26
In-State Transfer Students .....	26
Out-of-State Transfer Students .....	26
Access Rights to Records .....	26
Dispute Resolution Procedures .....	27
Due Process Procedures.....	27
Opportunity To Examine Records and Parent Participation in Meetings.....	27
Independent Educational Evaluations.....	28
Educational Surrogate Parent Policy and Procedures.....	29
Mediation.....	31
Due Process Hearings .....	31
Transfer of Rights at Age of Majority .....	32
Discipline Procedures .....	33
Preliminary Information.....	33
Authority of School Personnel.....	33
General .....	33
Additional Authority .....	34
Services.....	34
Placement in Interim Alternative Educational Settings.....	35
Manifestation Determination Reviews .....	36
Change of Placement.....	37

Referral to Law Enforcement and Judicial Authorities .....	37
Placement During Appeals .....	37
Protections for Students Not Yet Eligible for Special Education and Related Services.....	38
Confidentiality of Information.....	39
Confidentiality of Educational Records/Information Policy and Procedures.....	39
Students with Disabilities Parentally Placed in Independent Schools or Home Study Programs .....	41
School Districts Without a Public School .....	41
Local Educational Agency Reporting to State .....	41
Required Data Collection for General Supervision and Monitoring.....	42
Appendix A: Attestation Form .....	43

## Model Local Educational Agency Special Education Procedures and Practices

It is the responsibility of our local educational agency (LEA) to meet the needs of students with disabilities as defined in federal and state law and regulations and to provide a free appropriate public education to students in the least restrictive environment.

By adopting these model procedures and practices, our LEA describes how it fulfills the obligations under the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) and the Vermont Special Education Rules 2360 series (Serving Children with Disabilities).

LEAs must develop or adopt written policies and procedures in a number of different areas, and our LEA has chosen to adopt the model procedures and practices promulgated by the Vermont Agency of Education (AOE) in order to satisfy the requirements of IDEA and the Special Education Rules 2360 Series. This document, while comprehensive, does not include every requirement set forth in the IDEA, the regulations implementing IDEA, and/or the Vermont Special Education Rules 2360 series. Our LEA recognizes its obligation to follow these laws, whether or not their provisions are restated in the Vermont Special Education Procedures and Practices Manual.

### Full Educational Opportunity Goal

In order to meet the State of Vermont's goal of providing equitable educational opportunities to all students with disabilities, from birth through age 21, each LEA must make available to all of its students with disabilities the full variety of educational programs and services available to nondisabled students in the LEA. These include art, music, industrial arts, consumer and homemaking education, and vocational education or any program or activity in which nondisabled students participate. Each LEA must also provide supplementary aids and services determined appropriate and necessary by the student's IEP team to ensure that students with disabilities have an equal opportunity to participate in nonacademic and extracurricular services and activities.

(34 CFR §§ [300.109](#); [300.110](#); [300.201](#))

### Free Appropriate Public Education

Students with disabilities ages 3-21 who are eligible for special education are entitled to a Free Appropriate Public Education (FAPE) by our LEA. An eligible child/student under IDEA Part B shall be entitled to a FAPE beginning no later than the student's third birthday and continuing, unless otherwise provided, through 21 years of age ([VTSBE 2360.2.1](#)). This entitlement also applies to students who have been suspended or expelled from their public or independent school, have previously dropped out of school and have since re-enrolled, and students who are incarcerated. Additional information for children with disabilities ages 3 through 5 can be found in the [Dear Colleague Letter Preschool LRE \(2017\)](#).

A Free Appropriate Public Education means that our LEA provides:

1. An Individualized Education Program (IEP) written to meet the unique needs of each student regarding specially designed instruction, supports, services, and student-specific academic and non-academic goals. Those needs will be supported within the general education environment to the maximum extent appropriate, so that the student can meet the educational standards that apply to all students.
2. Special education and related services to all eligible students at no cost to the student's family, as required by the IEP.
3. Assistive technology devices and/or services to all eligible students to increase, maintain or improve the student's functional capabilities.
4. Instruction in the Least Restrictive Environment (LRE), which means that, to the maximum extent appropriate, the student is educated with their non-disabled peers. The use of special classes, separate schools or other removal of the student from the general education environment only occurs if the nature or severity of the student's disability is such that the student cannot be successfully educated in the general education environment with the use of supplementary aids and services. LRE means that eligible students should be taught with their peers as much as possible. LRE may look different for each student. Our LEA has its own continuum of placements, and each placement is based on student need. If the student is placed outside of the general education classroom, the IEP shall include an explanation as to why.
5. Accommodations, supplementary aids and services to students to support the student in the LRE. Extended School Year Services (ESY) are provided when a student's IEP Team determines, on an individual basis, that those services are necessary for the provision of FAPE. Our LEA does not limit the availability of ESY services to students with specific disabilities, nor does it limit the amount of services a student can receive. The decision to provide ESY services, and the type(s) of service(s) provided, is based on the student's need. ESY services may extend the school day, and may be offered on weekends, holidays and school vacations, as well as during the summer months.
6. Residential program placement. If our LEA places a student with a disability in a public or private residential program deemed necessary to provide special education and related services to a student with a disability, the program, including non-medical care and room and board, will come at no cost to the parents of the student.
7. Supplementary aids and services determined appropriate and necessary by the student's IEP Team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford students with disabilities an equal opportunity for participation in those services and activities as provided to students without disabilities.
8. Access to educational programs and services. Our LEA ensures that students with disabilities served by our LEA have available to them the variety of educational programs and services available to nondisabled students served by our LEA, including art, music, proficiency-based graduation requirements, industrial arts, consumer and homemaking education, and vocational education.

9. Appropriate physical education services. Our LEA ensures that a student with a disability receives appropriate physical education services. Our LEA affords each student with a disability the opportunity to participate in a regular physical education program available to non-disabled students, unless the student is enrolled full time in a separate facility or needs specially designed physical education, as prescribed in the student's IEP.
10. Related services as determined by the IEP team, including transportation and developmental, corrective or other supportive services to assist the student from benefitting from special education including speech-language, audiology, interpreting, psychological services, occupational and physical therapy, counseling services, school health services, school nurse services, social work services, and parent counseling and training.

## LEA Eligibility for IDEA B Funding

Our LEA will take measurable steps to recruit, hire, train and retain personnel who meet the [applicable requirements](#) to provide special education and related services to children with disabilities ([Section 300.156\(d\)](#)).

- [Part 300 \(Part B\) – Assistance to States for the Education of Children with Disabilities](#)
- [Section 300.156 – Personnel qualifications](#)

## Child Find

The Individuals with Disabilities Education Act (IDEA) requires that all public schools locate, identify and evaluate (at no cost to the parent) all students suspected of having a disability from birth through age 21. Our LEA meets this requirement to identify students, which exists even if the public school is not currently providing special education services and includes students who have been advancing from grade to grade.

Our LEA locates and identifies children or students who are: homeless, migrant, in the custody of the Department for Children and Families (DCF), vulnerable adults, not enrolled in school, parentally placed in independent schools (within our LEA boundaries) and/or enrolled in a Vermont Home Study Program.

For children birth up to age 3, our LEA may fulfill its Child Find responsibility by developing and maintaining a regional agreement with a Children's Integrated Services/Early Intervention (CIS/EI) program or other entities.

Under IDEA Part B 619 (ages 3 through 5), screening may be conducted as part of child find activities in order to determine whether the child should be referred for further evaluation and may be in need of special education and related services. Parents will receive a copy of the [Part B Procedural Safeguards](#) at the time of a child's initial referral for special education evaluation under Part B of IDEA or when the parents request a special education evaluation of their child.

There can be some confusion about the difference between screening and assessment in early childhood settings. This [infographic](#) on screening and assessment in early childhood settings helps illustrate key characteristics for each type of tool.

As co-lead agencies, AOE and the Agency of Human Services (AHS) have adopted procedures outlined in the Part C Interagency Agreement and are specified in regional CIS/EI and LEA agreements, to conduct screenings for children under the age of three who are suspected of having a disability and may be in need of early intervention services. For children with established diagnosed conditions set forth in [VTSBE 2360.5.5\(a\)\(2\)](#), screening is not necessary because records establish that the child has a disability and is eligible for Part C services.

Screening procedures are activities that are jointly developed in regional agreements and carried out by the regional CIS/EI provider and/or our LEA to identify, at the earliest possible age, a child suspected of having a disability and in need of early intervention services. They include the administration of state-approved screening tools and methods by qualified personnel.

For students aged 3 through 21, it is our LEA's responsibility to conduct Child Find activities.

In order to implement Child Find, our LEA has developed and is implementing a Child Find System. Our LEA must provide a public notice related to Child Find. That notice shall:

- Be available in all the native languages within our LEA;
- Ensure confidentiality of all students;
- Describe the students whom our LEA is seeking to find and what will be done with the information collected;
- Contain a summary of policies and procedures that our LEA will follow (storage, disclosure to third parties, retention and destruction of information);
- Contain a description of the Family Educational Rights and Privacy Act (FERPA) and implementing regulations;
- Be advertised in a local newspaper, Front Porch Forum, radio and/or social media, local community centers, pediatrician offices, and/or on applicable websites, should the LEA choose to.

(34 CFR §§ [303.320](#), [303.21](#), [303.421](#), [303.420\(a\)\(1\)](#)/[VTSBE 2360.5.3](#))

## Evaluation

### Initial Evaluations

A referral for an initial special education evaluation may come from: parents/guardians, school staff/504 team/Educational Support Team (EST), a representative from the AOE, regional Children's Integrated Services/Early Intervention programs (CIS/EI), or another Vermont state

agency or department (e.g., Agency of Human Services, Department for Children and Families, Department of Mental Health).

A written referral is not required, with the exception of children identified by CIS/EI as potentially eligible for Part B services at age three. Between six months and 90 days before the child's third birthday, the regional CIS/EI program must provide written notification to our LEA. The IDEA Part C to Part B Transition section contains specific and additional information on CIS/EI transition to ECSE. Our LEA will document the date on which the referral was made and by whom. Within 15 days of the referral, our LEA begins the special education evaluation process, and requests consent to initiate the evaluation from the parent/guardian or Educational Surrogate Parent (if the student is in DCF custody). Should our LEA not complete the evaluation or convene an evaluation meeting within 15 days, our LEA will provide the parent/guardian written notice including an explanation for contributing factors to the decision.

A student's participation in the school's Response to Intervention (RTI), Multi-tiered System of Supports (MTSS), Evidence-Based Interventions (EBI) or other strategies or interventions for academic and behavioral support must not cause the evaluation to be delayed or denied. Student participation in Response to Intervention (RTI) or other evidence-based interventions shall not be used by our LEA to deny a timely initial comprehensive special education evaluation for students suspected of having a disability.

If the evaluation moves forward, our LEA holds an Evaluation Planning Team (EPT) meeting. This meeting will determine which areas of concern need to be evaluated/what questions the team wants answered, which tests will be used and who will be administering the tests. The parent/guardian or Educational Surrogate will need to sign consent for any individual tests that will be administered to the student as part of the evaluation process.

The timeline for the evaluation and issued report is 60 days from date that our LEA is in receipt of the Parental Consent Form or the date on our LEA's Notice, which informs parents that it will be reviewing existing data as the sole basis for the initial evaluation.

If the evaluation is going to exceed 60 days, our LEA must inform the parents in writing. Our LEA is not permitted to delay the evaluation and issued report due to reasons specific to our LEA (e.g., our LEA can't find a speech/language pathologist to do the evaluation, the special educator is out on leave, or quantity of snow days enacted by our LEA). A delay to the evaluation and issued report must be based on conditions pertaining to the student/family (e.g., due to student/family illness or hospitalization, the student's availability for the assessment, or relocation to another LEA by the student/family). Parents must receive written notice about any delay prior to the 60-day timeline, in which our LEA must identify the expected completion date.

The IDEA includes a special rule for eligibility determination. A student must not be determined to be a student with a disability if the determinant factor for that determination is:

- Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the ESEA as such section was in effect on the day before the date of enactment of the Every Student Succeeds Act (December 9, 2015));
- Lack of appropriate instruction in math, or ● Limited English proficiency.

[\(34 CFR § 300.306/VTSBE 2362.2.1\)](#)

## Reevaluation

Every three years (or earlier if requested by the parent/guardian or teacher), students participate in a reevaluation to determine the need for continued educational and/or related service needs. If the parent/guardian and our LEA agree that a reevaluation is deemed unnecessary then they may choose to forgo the assessment.

[\(34 CFR § 300.303/VTSBE 2362.2.3\)](#)

## Determination of Eligibility

Every evaluation will include three sections (or gates):

1. Disability Determination: The team must determine what questions they want answered. The answers will help to determine if the student meets the eligibility criteria for one of the 13 special education disability categories:
  - Autism spectrum disorder (ASD);
  - Deaf/blind (DB);
  - Developmental delay\* (DD); ● Emotional disturbance (ED);
  - Hearing loss (HL);
  - Intellectual disability (ID);
  - Multiple disabilities (MD);
  - Other health impairment (OHI);
  - Including, but not limited to [Long COVID](#);
  - Orthopedic impairment (OI);
  - Specific learning disability (SLD);
  - Speech/language impairment (SLI);
  - Traumatic brain injury (TBI); ● Visual impairment (VI).

\*developmental delay is the only special education disability category that applies for ages 3 through 5.

2. Adverse Effect: If the student has a disability, how does it impact the student's ability to learn? The answers will determine which academic areas are being affected (e.g., math calculation, basic reading, oral expression, written expression and/or functional skills). Adverse effect begins with age 6 evaluations and does not apply for ages 3 through 5.
3. Need for Special Education: Once the disability has been identified and the determination of how it impacts the student's education is described, the team must determine if the student requires specially designed instruction to benefit from their educational program. Specially designed instruction means adapting the content, methodology, or delivery of instruction as appropriate to the needs of an eligible student under the IDEA:
  - a. To address the unique needs of the student resulting from the student's disability; and
  - b. To ensure access of the student to the general curriculum, so that the student can meet the educational standards within the jurisdiction of the public agency that apply to all students.

[\(34 CFR §§ 300.8\)](#)

Once special education eligibility has been determined, the team must then meet again (or continue after the eligibility meeting) to write an Individualized Education Program (IEP). The IEP is designed to reflect the results from the evaluation and developed to enable the student to progress in the general education curriculum.

## Team Membership

A team is formed after the referral for an evaluation or during a reevaluation. Team members who are familiar with the student (e.g., teachers, parents/guardians) gather to develop the evaluation plan. The Evaluation Planning Team (EPT) will discuss the student's strengths and needs and will determine which areas should be evaluated. The IEP team is responsible for the development, implementation and progress monitoring of each eligible student's IEP.

Participants for an evaluation team or IEP team may include many of the same participants:

1. LEA representative: This may be the principal, special educator, special education director or someone else appointed by our LEA. This person must be knowledgeable about the curriculum and resources and must be qualified to make a final decision if consensus isn't met.
2. Parent(s), a legal guardian or an educational surrogate parent if the student is an unaccompanied youth or in DCF custody.
3. General education teacher: This is generally the student's classroom teacher, but may have been a previous year's teacher.

4. Person who can interpret the evaluation results: This may be a special educator, a speech/language pathologist or school psychologist.
5. Special educator or service provider: This can also include an occupational therapist, adaptive PE teacher or speech/language pathologist.
6. The student may be invited if appropriate. As students get older, it may be in their best interest to include them in meetings so they can advocate for what they feel they need. Adult students without guardianships must be included.
7. If the student has a Specific Learning Disability (SLD), then an additional team member who is qualified to conduct diagnostic examinations will be in attendance. This may be a school psychologist, special educator or reading teacher.
8. If the student was previously served under CIS/EI, the parent can request that an invitation be extended to the Part C staff to support a smooth transition.
9. Others possible team members: Parents may bring family members or advocates, and may request medical professionals, audiologists or others to participate as well. Schools may choose to invite others as well (e.g., job coach or paraeducator for Post-Secondary Transition Services; outside agencies such as Developmental Services, Adult Mental Health and/or Vocational Rehabilitation staff).

Team members may be excused from a meeting if the parent/guardian and our LEA representative agree in writing and if that team member is not needed (e.g., the math teacher may not need to be in attendance if math is not going to be discussed). If, however, the team member is required and needs to be excused from the meeting (with the written agreement with the parent/guardian and LEA representative), then the team member must submit an update/provide input in writing prior to the meeting.

When making any decisions during an evaluation meeting or an IEP meeting, all parties strive for consensus. It is best that decisions are made together with everyone in agreement. If there is not agreement between the team members, then it is the responsibility of our LEA representative to make the final decision. If they disagree with the LEA's decision, the parent/guardians have the right to pursue alternative dispute resolution procedures through mediation, due process or through an administrative complaint.

## Development, Review, and Revision of IEP

### Individualized Education Program (IEP)

An IEP is a written plan for a student who is eligible for special education. An IEP Team develops and implements the IEP. The IEP is reviewed and revised at least every year, more frequently if needed. A student's first IEP is developed within 30 days of their special education eligibility meeting.

For a preschool age child, the IEP shall address how the student's disability affects their access to and active participation in age-appropriate activities within the LRE. The IEP present levels of performance, goals, and objectives shall align with the following early childhood outcome areas:

- Positive social and emotional skills and relationships;
- Acquisition and use of and knowledge and skills; and ●  
Taking appropriate action to meet the student's need.

Each IEP must have the following components:

1. The current levels of achievement, strengths and needs of the student (this may be both academic and social/emotional/behavioral), as well as a description of the student's current functional performance.
2. Input from the parent.
3. A statement of any individual accommodations in the administration of State, district-wide or local assessments of student achievement.
4. Academic, developmental (age appropriate) and functional goals and objectives that are measurable, with projected dates of accomplishment. Goals should be written to reflect the expectation that they will be completed within a year of being articulated.
5. Goals which enable the student to participate in the general education curriculum (or for preschool students, participate in activities) with non-disabled peers.
6. A way of providing progress reporting of annual goals to the student's parents as often as progress reporting is provided to the parents of the student's non-disabled peers.
7. A list of services (including special education, related services, supplementary aids and services, and Extended Year Services (ESY)) that the student is entitled to receive, under their IEP. Services must contain:
  - A description of services (e.g., math intervention, speech language skill development, behavior support);
  - The location of services (e.g., general education classroom, speech room, gym);
  - The provider of the services (e.g., title, not name of a specific person);
  - Service frequency and duration (e.g., how many days per week and for how long); ●  
The size of the group receiving the service (e.g., 1:1, small group, large group).
8. A list of accommodations and/or modifications needed by the student (e.g., does the student require extra time to take tests? Does the student need tests read to them? Does the student need to complete fewer math problems or be pre-taught the vocabulary prior to the lesson?).
9. Additional considerations as needed. These could include, but are not limited to:
  - Language needs if the student's first language is not English;

- Braille instruction if the student is blind/visually impaired;
- Communication needs if the student has a hearing loss (e.g., does the student need an interpreter or instruction in sign language);
- Assistive technology devices or services (e.g., speech-to-text software, audio books);
- Behavioral supports/interventions (e.g., does the student need a behavioral interventionist or a behavior plan?);
  
- Social skills, anger management, conflict resolution (e.g., this may be instruction or support from staff in the classroom);
- Supplementary aids and services program modifications or supports, or supports for school staff who will be working with the student, to support the following outcomes:
  - Make progress toward IEP goals;
  - Make progress in the general education curriculum;
  - Participate in extra-curricular activities;
  - Be educated in the Least Restrictive Environment (LRE) (e.g., shortened assignments, planned seating on the bus, 1:1 support, frequent breaks, specific instruction/training for staff working with the student, oral tests, interpreters during basketball practices, or facilitating play);
  - A device or service that is necessary for the student to receive FAPE.

Every year, the IEP is reviewed and revised to determine if the student is making progress toward the goals as outlined. The team revises the IEP based on data indicating student progress. Information that is included in the revised IEP includes:

- Progress or lack of progress toward the student’s IEP goals;
- Progress or lack of progress in the general education curriculum;
- The results if there are any new evaluations, as applicable;
- New information from the parents/guardians (e.g., new family dynamics/divorce or new baby, behaviors at home, new medication, new student interest/activity);
- The student’s anticipated needs for the next year (e.g., will the student need increased or decreased services based on progress?);
- Determination of the student’s placement, including a description and related rationale as to how much the student will be taught with their peers in the general education classroom;
- Information regarding any accommodations that the student will receive for state or LEA wide or local assessments, an explanation as to why the assessment as generally provided is not appropriate, and a determination about how the student will be assessed;
- Discuss/determine if the student needs Extended School Year Services (ESY).

Our LEA will make the student’s IEP available to each general education teacher, special education teacher, related service provider and other service provider who is responsible for its implementation. Further, teachers and providers will be made aware of their specific

responsibilities related to IEP implementation as well as the specific accommodations, modifications and supports as outlined in each student's IEP.

[\(34 CFR § 300.324/VTSBE 2363.6\)](#)

### Changes to the IEP

Periodically, the IEP Team may make some changes to the student's goals or the services between annual reviews. Sometimes changes between annual reviews may be facilitated without holding an in-person/virtual meeting, in which case the parent/guardian must agree in writing to not hold the meeting. Generally, in the absence of a meeting, the student's case manager will make the change in the IEP and send out a new copy to the team.

[\(34 CFR § 300.324/VTSBE 2363.6\)](#)

### Related Services: Physical and Occupational Therapy

Our LEA ensures related services are provided in accordance with the IEP. Related services are the developmental, corrective and other supportive services required to assist a student with a disability in benefitting from special education, including speech-language pathology, audiology services, interpreting services, psychological services, physical therapy, occupational therapy, counseling services (including rehabilitation counseling services), orientation, transportation and mobility services, medical services as defined in this section, parent counseling and training, school health services, school nurse services, school social work, assistive technology services, appropriate access to recreation (including therapeutic recreation), other appropriate developmental or corrective support services, and other appropriate support services including the early identification and assessment of disabling conditions in students as described in [VTSBE Rule 2360.2.16](#).

### Extended School Year Services (ESY)

Some students with IEPs require Extended School Year Services. However, IEP eligibility does not guarantee ESY services. Not all students with disabilities are eligible for ESY services.

The IEP Team determines whether the ESY services are necessary for the provision of FAPE. In Vermont, this decision is based on:

- If the student needs ESY to allow the student an opportunity to reach their educational goals;
- If there is significant regression during vacations that students are not regaining quickly;
- If the student's disability presents a danger of substantial regression;
- If the student's post-secondary transition goals require continued programming beyond the school year;

## Post-Secondary Transition

The postsecondary transition plan begins during the first IEP revision after the student turns 16. This means that the IEP Team must begin planning for the student at age 15 or earlier. The first transition plan must be complete, include all 8 elements of Indicator 13, and include the following domain areas: education/training, employment, and independent living (as applicable).

When developing the plan, the IEP Team will use age-appropriate transition assessments, including, but not limited to: academic achievement, college/career readiness inventories, student preferences and interests. As outlined in the Vermont [IEP post-secondary transition plan template](#), the assessments must delve into identifying information about that student's strengths, needs, preferences and interests. Other agencies may attend the transition meeting if they will be involved or paying for services after the student graduates. Examples of these agencies include Vocational Rehabilitation, Developmental Services, Department of Mental Health and Designated Agencies.

When a student nears graduation, our LEA will write a Summary of Performance for that student. It will be based on the student's unique needs and will include academic achievement, functional performance and recommendations on how to assist the student in meeting their post-secondary goals. Please see the Sample Summary of Performance Plan on the [Vermont AOE website](#) for info on the Summary of Performance.

[\(VTSBE 2362.2.4\(g\)\(i\)\)](#)

## Placement

Our LEA ensures that the educational placement for students with disabilities (i.e., the provision of special education and related services) is determined by the IEP Team based on the student's individual circumstances and individual needs, and not based on the student's disability category.

Our LEA ensures an evaluation is conducted before special education and related services are provided to a student with a disability, and that an educational placement is provided to implement each student's IEP. The IEP Team makes placement decisions. The placement is based upon and implements the student's IEP, is determined at least annually, and in uniformity with the least restrictive environment provisions described below.

[\(34 CFR § 300.116/VTSBE 2364.3, 34 CFR §§ 300.301\(a\), 300.114, 300.115, 300.116, 300-117, 300.116\(b\)\)](#)

## Notice of Placement

Our LEA provides notice of a student's educational placement, following the development of the IEP, and a copy of the IEP and notice is given to the student's parent(s).

(34 CFR § 300.503)

## Consent For Placement

Our LEA obtains informed and written parental consent prior to the initial provision of special education and related services to a student with a disability in a program providing special education and related services.

Reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the student are made by our LEA. If the parent of a student fails to respond or refuses to consent to services, our LEA cannot provide special education or related services, and cannot use mediation or due process procedures to obtain agreement or a ruling that the services may be provided to the student.

If the parent of the student refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide consent for the initial provision of special education and related services, our LEA will not be considered to be in violation of the requirement to make available FAPE to the student for the failure to provide the student with the special education and related services for which our LEA requests consent. Our LEA is not required to convene an IEP team meeting or develop an IEP for the student for the special education and related services for which our LEA requests such consent.

[\(34 CFR § 300.300\(b\)\)](#)

## Reintegration - General LRE Requirements

Our LEA ensures that to the maximum extent appropriate, students with disabilities have the right to be educated with their non-disabled peers. Least Restrictive Environment (LRE) is not necessarily a location, so much as it is a determination around how the student can receive an appropriate education, while also meeting their unique needs, in light of their circumstances. Schools generally have multiple options (often referred to as the continuum of services and/or placements) for LRE, including:

- The general education classroom with their peers (i.e., inclusion);
- The general education classroom with additional supports and/or services;
- A combination of education provided in the general education classroom and in a separate/special education classroom;
- Full time special education classroom;
- Independent schools;

- Tutorials;
- Residential settings;
- Homebound/hospitalized settings.

Additionally, a child/student may receive early childhood special education (ECSE) services in a state-approved public or private prequalified universal prekindergarten (UPK) program. Our LEA may, but is not required to, provide ECSE services outside of our LEA, even if the student is enrolled in an UPK program outside of our LEA. All public and private UPK programs shall adhere to applicable federal and state laws including, but not limited to: IDEA Part B, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act (ADA), Title VII of the Civil Rights Act of 1964, Vermont’s Act 166 of 2014, VTSBE Rule Series 2600, and the Vermont Agency of Human Services (AHS) Child Development Division (CDD) licensing regulations. For students who are enrolled in public or private UPK programs and receive ECSE services, the UPK program shall allow access to ECSE service providers and permit announced and unannounced visits by representatives of Agency of Education, AHS and our LEA staff.

Each student’s LRE is differentiated dependent upon the student’s needs. Some benefits of inclusion include:

- Students have the opportunity to learn from each other;
- Students can build and maintain relationships;
- Students eligible for special education are not considered different or “other” by their peers;
- Students have access to the same instruction as their peers, although it may be modified to meet their needs;
- Students benefit from the resources available in the classroom.

Special classes, separate schooling or other removal of students with disabilities from the general educational environment shall occur only if the nature or severity of the student’s disability is such that education in general classes with the use of supplementary aids and services cannot be achieved satisfactorily.

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 student if:

1. The IEP has been developed with the parents in accordance with Rules 2363;
2. The IEP Team has determined that the student's placement contained in the IEP is appropriate for the student;
3. Each of the options under consideration by the IEP Team for fulfilling the requirements of the student's IEP would constitute a free appropriate public education in the least restrictive environment for the student; and
4. The funding mechanism for the special education service was not used to deny a free appropriate public education to the student.

## Residential Placement

At any time, a parent/guardian or IEP Team member may request that the IEP Team consider sending a student to a residential placement. Once that request has been made, the Secretary of Education must be informed in writing. The Secretary may establish a Residential Review Team to consider the request to investigate the need for a residential placement. In addition, the IEP Team is provided with technical assistance (by either the Residential Review Team or a designated member) regarding the need for residential placement, alternatives to residential placement and alternative cost-effective residential facilities.

The Residential Review Team has 30 days to investigate the residential request. The Residential Review Team may:

- Advise the IEP Team on alternatives to residential placement;
- Review the IEP to consider whether the student can be educated in a less restrictive environment;
- Assist our LEA in locating cost effective and appropriate residential facilities;
- Request, but not require, the development of a new IEP if alternatives to residential placement are appropriate;
- Offer mediation to resolve disputes relating to the need for residential placement;
- Provide notice in writing to the IEP team if/when it determines that residential placement (or a particular placement) is not appropriate and reasons for the conclusions.

If the Residential Review Team recommends that the student is not in need of a residential placement, the Secretary may request a due process hearing.

The Secretary of Education has the authority to waive the above procedures not otherwise inconsistent with law for emergency placements for administrative efficiency.

If the Residential Review Team/designee discovers that the rules of LRE determinations have not been followed, it may require our LEA to submit a plan of correction.

If the IEP Team selects a more costly residential placement than has been identified by the Residential Review Team (e.g., other available, appropriate, cost-effective alternatives/residential facilities were previously identified), then our LEA's reimbursement for the residential facility shall be based on the less costly placement. Our LEA has the right to appeal that decision to the state Board of Education.

If/when the IEP Team places a student at a residential facility, it shall be at no cost to the parent/guardian.

The Agency of Education shall maintain a current list that identifies residential facilities, which may include: approved disability categories, approval status in the host state, costs for tuition and other services, and other information as deemed relevant and appropriate.

If the Residential Review Team recommends that a residential placement may be funded by another state agency (i.e., not placed by our LEA), the Residential Review Team/designee and IEP Team shall work with the other state agency in a timely manner in accordance with the Interagency Agreement.

Any time a student attends a residential placement (either placed by the IEP team or another state agency), the IEP will be amended to include goals and objectives that are designed to reintegrate the student back into the public-school placement. The IEP will also include a description of how those goals and objectives will support the student into returning to a less restrictive placement.

## Parental Consent

Our LEA ensures the educational rights of parents and adult students to consent to the provision of special education services under federal ([34 CFR § 300.300](#)) and state ([VTSBE 2365.1.3](#)) regulations.

Informed parental consent shall be required:

1. Before conducting an initial evaluation or reevaluation which consists of more than a review of existing data.
2. Before the initial provision of special education and related services. Consent for initial evaluation may not be construed as consent for initial provision of special education services.

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.

Parental consent is not required:

1. Before reviewing existing data as part of an evaluation or a reevaluation;
2. Before administering a test or other evaluation that is administered to all students unless, before administration of that test or evaluation, consent is required of parents of all students; or

3. Before a reevaluation, if our LEA can demonstrate that it has taken reasonable measures to obtain consent and the parent failed to respond.

If the parents of a student refuse consent for an initial evaluation or a reevaluation which includes the gathering of new information:

1. Our LEA may continue to pursue these evaluations by seeking mediation, using due process or reviewing existing data.
2. Our LEA may decide not to pursue the evaluation and shall document its justification for doing so in the student's record.
3. If the parent of a student enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation, or the parent fails to respond to a request to provide consent, our LEA may pursue the initial evaluation of the student by utilizing mediation or due process. The public school shall not have violated its obligation to locate, identify, and evaluate students suspected of being students with disabilities if it declines to pursue an evaluation to which a parent has failed to consent.
4. Except as otherwise provided in regulations, our LEA may not use a parent's refusal to consent to an initial evaluation to deny the parent or student any LEA service, benefit or activity outside of special education.

[\(34 CFR § 300.300/VTSBE 2365.1.3\)](#)

### Parental Revocation of Consent

Our LEA ensures the educational rights of parents and adult students to revoke their consent to the provision of special education services under federal (§ 300.9(c)[1-2](#)) and state ([§ 2363.8\(e\)](#)) regulations.

If, at any time after the initial provision of special education and related services, the parent of a student revokes consent in writing for the continued provision of special education and related services, our LEA:

1. Will stop providing special education and related services to the student, but, before doing so, will provide prior written notice.
2. Will not use special education dispute resolution procedures, including mediation and due process, to obtain agreement or a ruling that the services may be provided to the student.
3. Is not considered to be in violation of the requirement to make FAPE available to the student because of the failure to provide the student with further special education and related services.
4. Is not required to convene an IEP team meeting or develop an IEP for the student for further provision of special education and related services.

5. Is not required to amend the student's education records to remove any reference to the student's receipt of special education and related services because of the revocation of consent.

#### Procedures:

1. Our Local Education LEA has/will adopt a written procedure for parents and adult students to revoke their consent to special education services and the written documentation must indicate the date of revocation. Our LEA will also include the date our LEA received the written revocation of consent form should it be presented to our LEA following the date the revocation was indicated to start.
2. Our LEA shall provide written notice to the parent that it is ceasing the provision of special education services and may not continue to provide special education and related services.
3. Our LEA may not use due process procedures or mediation to obtain an agreement or a ruling that allows the special education and related services be provided to the student.
4. Our LEA will not be considered in violation of the requirement of a free, appropriate public education for failure to provide the student with the special education and related services because the parent has withdrawn their consent to such services.
5. Our LEA is not responsible for convening an IEP Team meeting to review or develop an IEP for the student after date of the revocation of consent.
6. Our LEA is not required to amend the student's educational records or to remove any references to the student's receipt of special education and related services prior to the date of the revocation of consent.
7. Our LEA shall inform the parent that any referral for future special education and related services will be treated as an initial referral for a special education eligibility evaluation.

(34 CFR § 300.9(c)(1-2)/[VTSBE 2363.8\(e\)](#))

#### IDEA Part C (Birth to Age 3) to Part B 619 (Ages 3 through 5) Transition

IDEA requires 100% of the children enrolled in Part C who are eligible for Part B to have Part B early childhood special education services in place by each child's third birthday.

This transition for children and their families as they leave Part C should be seamless, so they have timely access to appropriate services. With a transition plan and supports in place, families can move smoothly from one program or system to another, or among services within a program or system. [Local structures, policies, agreements](#), personnel development processes, and other mechanisms must be in place within our LEA in order to support the transition process.

[Form 6B](#) is a required Vermont Agency of Education form. It is as a guidance tool for Part B eligibility determination and a parent information and consent form. This document is to be completed by our LEA with the family during the transition meeting(s). Depending on the

family and student's needs, the transition meeting may be several meetings. Therefore, Form 6B should be seen as a document that is completed over a period leading to the student's third birthday and possible implementation of the ECSE IEP by the student's third birthday. The [C to B Transition module](#) provides more information.

### Early Childhood Special Education Eligibility at Age Three

Only our LEA can determine the eligibility of a 3-year-old to receive ECSE services. Part C/EI can decide if a child is potentially eligible for ECSE services based on requirements in [2360.5.10\(c\)](#) and present this evidence to our LEA. It is up to our LEA to consider and review all evidence presented by Part C/EI to determine the child's ECSE services eligibility.

A meeting notice of the initial IEP meeting will be sent to their CIS/EI Part C Coordinator or designee at the request of the parent.

1. If our LEA determines the child eligible for early childhood special education services, an IEP must be developed and implemented by the child's third birthday ([2360.5.10](#)). This will help ensure a seamless and effective transition for children with disabilities from Part C/EI to Part B ECSE within our LEA. The required components for an ECSE IEP are listed in [Rule 2363.7](#). For all children who transition from CIS/EI Part C to Part B ECSE, the IEP Team must consider the Individualized Family Service Plan (IFSP)/One Plan content when developing the initial IEP. This includes the natural environments statement. [Form 5: the ECSE \(Ages 3 through 5\) IEP template](#) is another important form in this process.
2. The IEP Team must develop the ECSE IEP prior to the end of our school year so that the child's IEP is in place at the beginning of the following school year. Furthermore, if the child is to receive uninterrupted services during the summer months, the IEP Team must determine the date when the child's services will begin.

### Early Childhood Special Education Eligibility from Age 3 until 6<sup>th</sup> Birthday

Essential Early Education (EEE) is IDEA Part B Early Childhood Special Education (ECSE) services for children ages three through five, inclusive. Special education and related services are provided by our LEA to ensure children receive age-appropriate services within inclusive environments to the fullest extent possible. Decisions on a child's environment are made individually by the IEP Team, including family members, and should be considered after our LEA determines special education and related services. For 3 through 5-year-olds, the family home is another appropriate environment.

A child age three years through five years shall be eligible for ECSE services if the child meets criteria set forth in Part C [Rule 2361.2](#).

## Evaluation and Developmental Delay

Developmental delay is determined through a comprehensive evaluation as measured by at least two appropriate assessment measures, one of which must be a standardized diagnostic instrument. Other measures may include, but are not limited to, observation of a student's function across daily routines and settings, interview with teachers, family and/or caregivers, review of ongoing assessment, and, if warranted, a functional behavior assessment.

To meet developmental delay criteria a student must demonstrate at least one of the following. Please note that using standard deviations is recommended over percentage delay:

- a 40% delay in one or more developmental domains;
- A 25% delay in two or more developmental domains;
- A 2.0 standard deviation at, or below the mean (2nd percentile) in one or more developmental domains; or
- A 1.5 standard deviation at, or below the mean (7th percentile) in two or more developmental domains.

Developmental Domains are defined as:

- Speech and language development, including receptive and/or expressive communication, articulation, fluency and/or voice;
- Adaptive development (self-help skills);
- Social or emotional development;
- Physical development, including gross or fine motor skills; or • Cognitive skills such as perception, memory, processing and reasoning.

The administration of any assessments shall be in compliance with the evaluation requirements set forth in [Rule 2362.2.1](#).

If the EPT has determined the student eligible to receive special education and related services an IEP shall be written within 30 days of the eligibility determination.

## Transition for Children Moving to Kindergarten

Our LEA will comply with [Rule 2361.4](#) regarding how our LEA will support an IEP Team and children moving to kindergarten.

## Transfer Pupils

### In-State Transfer Students

If a student moves to our LEA who was previously eligible for special education services, or who was being evaluated for special education in another Vermont LEA, we will either adopt the student's existing IEP, or develop a new IEP for the student. If our LEA develops a new IEP for the student, we will implement their existing IEP to the greatest extent possible until that time. In the absence of exceptional circumstances, a student's IEP services shall commence within one week of their enrollment.

[\(34 CFR § 300.323\(e\)\)](#)

To make this transition as smooth as possible, both the previous and new LEA will have to take reasonable steps to send and receive all relevant documents in a timely fashion.

[\(34 CFR §§ 300.124, 300.101\(b\)\)](#)

### Out-of-State Transfer Students

If a student eligible for special education services in another state moves into our LEA midschool year, our LEA, in consultation with the student's parent(s), shall provide a FAPE to that student, including services comparable to those described in the student's former IEP. This arrangement will continue until our LEA conducts an evaluation to determine initial eligibility in Vermont, and if eligible, until we develop and adopt a new IEP.

When a student eligible for special education transfers from another state to our LEA within the same school year, our LEA will conduct an evaluation as soon as possible to determine eligibility and, if appropriate, develop, adopt and implement a new IEP. Documentation of the evaluation shall include the evaluation's expected completion date, should it differ from the original expected date of completion.

To facilitate the transition of a student, the previous LEA and our LEA shall take reasonable steps to promptly send and receive, in accordance with the provisions of the Family Education Rights and Privacy Act (FERPA), the student's records, including the IEP, supporting documents, and any other records relating to the student's special education and related services. This rule may not be interpreted to limit either the previous LEA or our LEA's responsibilities pursuant to VTSBE Rule [2365.2.12](#) and [2365.2.13](#).

[\(34 CFR § 300.323\(e\), 34 CFR § 300.323\(f\), 34 CFR § 300.323\(g\)\)](#)

## Access Rights to Records

Our LEA ensures a parent's rights to inspect and review any education records relating to their students that are collected, maintained or used by our LEA under the IDEA.

Procedures:

Our LEA will comply with a parent's request to inspect and review their student's educational records without unnecessary delay:

- Before any meeting regarding an IEP; or
- Before any administrative complaint, mediation, resolution session, due process hearing or expedited hearing.
- In no case will records be provided more than 45 days after the parents' request has been made;
- Our LEA may charge a fee for copies if the fee does not prevent the parent(s) from exercising their right to review and inspect records;
- Our LEA has a process to record access to records, limit records to only a student's parent(s), and to provide location and types of records maintained upon request by parent(s);
- Our LEA has a procedure for parents to request amendment of educational records.

Our LEA must provide a procedure and an opportunity for a hearing for a parent or adult student to challenge information in the educational records that is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student.

## Dispute Resolution Procedures

The AOE provides dispute resolution processes and procedures for parents of students with disabilities and LEAs.

Our LEA's policy is to ensure parents are made aware of their rights to dispute resolution options by providing parents with a copy of their notice of procedural safeguards at least annually, as well as upon initial referral for special education, upon parent request for evaluation, upon request, and not later than the date on which the decision to take disciplinary action against a student eligible for special education is made.

## Due Process Procedures

### Opportunity To Examine Records and Parent Participation in Meetings

The parents of a student with a disability are afforded, in accordance with the policies in the section of this document titled Confidentiality of Information, an opportunity to:

- Inspect and review all education records with respect to the identification, evaluation, and educational placement of the student and the provision of a free appropriate public education to the student, and:
- Participate in meetings with respect to the identification, evaluation, and educational placement of the student and the provision of a free appropriate public education to the student.

Our LEA will provide parents of students with disabilities notification to ensure they have the opportunity to participate in meetings. The term “meeting” in this policy does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans or coordination of service provision. A meeting also does not include preparatory activities that LEA personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

The IEP Team, which includes the parent, makes decisions on the educational placement of the student. In implementing this policy, our LEA uses procedures consistent with the policies described above.

If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their student, our LEA uses other methods to ensure their participation, including individual or conference telephone calls or video conferencing. A placement decision may be made by the IEP Team without the involvement of the parent if our local educational agency is unable to obtain the parent’s participation in the decision. In this case, our LEA must have a record of its attempt to ensure parent involvement.

(34 CFR §§ 300.501, [300.322\(e\)](#))

## Independent Educational Evaluations

Parents or adult students have the right to ask for an independent evaluation if they don’t agree with the results of the evaluation that was obtained by our LEA. The independent evaluation:

- Is conducted by a qualified examiner who is not employed by our LEA;
- Is at no cost to the parent;
- May be requested one time for each evaluation completed by our LEA if the parent disagrees.

After the parent/guardian requests the evaluation, our LEA must (without unnecessary delay) either initiate a hearing to show that the evaluation was appropriate or ensure that the independent evaluation is at no cost to the parent.

Our LEA is required to provide parents information about where they may obtain the independent evaluation including location of the evaluation and the qualification of the examiner (the qualifications must be the same as the criteria that our LEA uses). If our LEA

criteria is not met for the independent evaluation, our LEA may call for mediation or a due process hearing. Parents are not required to tell our LEA why they want an independent evaluation.

Parents have the right to pay for their own independent evaluation, which may be presented as evidence at a hearing. Our LEA must consider the results of the parent/guardian's evaluation (if it meets our LEA's criteria) and make decisions based on the provisions of FAPE. If a hearing officer orders an independent evaluation, it must be at no cost to the parent.

[\(34 CFR § 300.502\)](#)

## Educational Surrogate Parent Policy and Procedures

It is the policy and responsibility of our LEA to ensure that the educational rights of children and students are protected under federal ([§ 300.519](#)) and state (VTSBE 2369\*) regulations regarding the identification and appointment of an educational surrogate parent to children and students either receiving special education services or being evaluated for special education eligibility. This includes children and students in the state's foster care system, homeless youth without a parent to reside with, and when the parents of a child/student are not known or cannot be located (unaccompanied youth). *\*Under the new rules, will be listed as VTSBE 2368)*

### Procedures:

1. The Department for Children and Families (DCF) caseworker, our LEA or other appropriate entity shall identify children/students eligible for an educational surrogate parent.
2. The responsible LEA or designated individual shall submit to the Vermont Agency of Education (AOE) a prescribed intake form requesting an educational surrogate parent be appointed to a student eligible, or being evaluated for, special education services.
  - To be eligible for an educational surrogate parent, the student must be in state custody, a homeless student without a parent residing with them or an unaccompanied youth (McKinney-Vento Act).
  - A student in conditional state custody, on a Section 504 Plan or being evaluated for Section 504 Plan, is not eligible to have an educational surrogate parent appointed to them.
  - A copy of the current prescribed intake form may be obtained by emailing [AOE.SpecialEd@vermont.gov](mailto:AOE.SpecialEd@vermont.gov).
3. The intake form allows for the referring agency, LEA, or other entity to recommend an educational surrogate to the AOE. If a recommendation cannot be determined, it should be noted on the intake form and the AOE will attempt to locate an individual to be appointed.

4. The Vermont Secretary of Education, or their designee (the Vermont Educational Surrogate Parent Program), shall assign an individual to act as the educational surrogate parent. The educational surrogate parent may represent the student in all matters related to:
  - The identification, evaluation and educational placement of a student; and: ●  
The provision of a Free Appropriate Public Education to the student.
5. The Vermont Educational Surrogate Parent Program shall make reasonable efforts to ensure the assignment of an educational surrogate parent within 30 days after the appropriate entity has determined a student requires an educational surrogate parent and the entity has submitted the required intake form to [AOE.SpecialEd@vermont.gov](mailto:AOE.SpecialEd@vermont.gov).
6. Before making the appointment, the Vermont Educational Surrogate Parent Program shall assure that the individual appointed as the educational surrogate parent:
  - Has no personal or professional interest that conflicts with the interests of the child/student to whom they are assigned;
  - Has the knowledge and skills to ensure adequate representation of the student;
  - Is not an employee of the AOE the student's LEA, or any other agency involved in the education or care of the student.
    - In the case of a student who is an unaccompanied youth, appropriate staff of the emergency shelter, transitional shelter, independent living programs or street outreach programs may be appointed as a temporary educational surrogate parent by the Vermont Educational Surrogate Parent Program.
7. Our LEA shall inform the Vermont Educational Surrogate Parent Program of any current status, or future changes in status, that would create a conflict of interest for the educational surrogate parent, as described in parts above.
8. Copies of the appointment letters will be provided by the Vermont Educational Surrogate Parent Program to the educational surrogate parent, the referring entity, and to the special education administrator for the responsible LEA unless otherwise determined by our LEA.
9. All letters of appointment as the educational surrogate parent must be maintained by our LEA for inspection upon request of the Vermont Agency of Education Monitoring Team or any other agency/legal entity with a legitimate interest in the student's special education programming and services.
10. Our LEA shall ensure that the special education documents for the student shall identify the educational surrogate parent as the individual serving the role of the parent in meetings of the Individual Education Program Team, the Evaluation Planning Team and on the current Individualized Education Program for the student.
11. The educational surrogate parent shall be afforded the same rights as a parent to inspect or receive copies of any LEA information that would assist them in their role as the

educational surrogate parent and would enable them to advocate for a Free Appropriate Public Education to the student for whom they are assigned.

[\(34 CFR § 300.519\)](#)

## Mediation

Our LEA may file a request for mediation to resolve a special education dispute, or our LEA and the parents may file a joint request for mediation. Our LEA assures that the use of mediation requested by our LEA will be only used if parents participate voluntarily and will not be used to deny or delay a parent's right to file a due process request or right to a due process hearing. Our LEA will not request mediation to obtain an agreement from the parent to provide special education and related services to the student if the parent has revoked consent for special education.

If the parties resolve the dispute or a portion of the dispute through the mediation process, the parties must execute a legally binding agreement. The agreement is reduced to writing, signed by the parties and a copy is given to each party. The agreement states that all discussions that occurred during mediation are confidential and may not be used as evidence in any hearing or civil proceeding. The agreement is legally binding upon the parties and is enforceable in circuit court. The agreement is signed by a representative of our LEA who has the authority to bind our LEA.

The mediation system is voluntary on the part of the parties and our LEA will not use it to deny or delay a parent's right to a hearing on the parent's due process complaint, or to deny any other rights afforded under the IDEA and state special education rules.

Additional notes:

- Mediation sessions are not recorded unless both parties and the mediator agree;
- Our LEA may be represented by two individuals, unless the parties agree to additional representatives;
- Our LEA may withdraw from mediation at any time; and
- Our LEA may recess a mediation session to consult advisors, if present, or to consult privately with the mediator.

[\(34 CFR § 300.506\)](#)

## Due Process Hearings

Our LEA ensures that while an LEA or a parent may file a due process complaint on any matter regarding the identification, evaluation or placement of a student or the provision of a free appropriate public education, our LEA will not use due process procedures or mediation to

order or obtain an agreement or a ruling that services may be provided to the student if the parent has revoked consent for the provision of special education and related services.

#### Procedures

- Our LEA will request a due process in accordance with [VTSBE 2365.1.6.2](#);
- Our LEA will not raise issues at the due process hearing that were not raised in the complaint;
- our LEA will respond in good faith to make a complete response to requests for the voluntary production of information as soon as practical;
- Our LEA will provide parents with a copy of the Procedural Safeguards Notice.

[Link to Vermont Agency of Education information on Mediation, Due Process, and Administrative Complaints](#)

[Link to Vermont Special Education Rules \(section 2365.1.6\) on Due Process Complaint Procedures](#)

[Link to Vermont Special Education Rules \(section 2365.1.6.7\) regarding scheduling of resolution session, mediation, prehearing conference, and due process hearing](#)

(34 CFR §§ [300.507](#), [300.508](#), [300.510](#))

#### Transfer of Rights at Age of Majority

Our LEA affords rights of privacy to students similar to those afforded to parents, taking into consideration the age of the student and type or severity of disability.

Please note:

1. The rights of parents regarding education records under FERPA transfer to the student at age 18.
2. Our LEA provides notice of transfer of rights to both the student and their parents.
3. If the rights accorded to parents under Part B of the IDEA are transferred to a student who reaches the age of majority (age 18 in Vermont), the rights regarding education records also transfer to the student.
4. Once a student reaches the age of 17, the IEP must include a statement that the student has been informed regarding this transfer of rights.
5. When a student with a disability reaches the age of 18, unless he or she has been determined to be incompetent as defined by state law, our LEA transfers the rights of parents under the IDEA to the individual adult student.

([34 CFR § 300.520/VTSBE 2365.1.12](#))

# Discipline Procedures

## Preliminary Information

### 1. Multi-Tiered System of Supports:

- Vermont state statutes (16 VSA § 2902) mandate that each public school shall develop and maintain a tiered system of academic and behavioral supports.
- The tiered systems of behavioral supports shall be designed to provide the necessary supports promptly and to identify and respond to students in need of support for emotional or behavioral challenges, including individualized behavioral supports.
- The school will provide all students with a continuum of evidence-based positive behavioral practices that promote social and emotional learning, including traumasensitive programming, that are both school-wide and focused on specific students or groups of students.

### 2. Equity:

- Our LEA takes actions to prevent significant disproportionality for students of all races and ethnicities in special education.
- Federal law requires that our LEA corrects this disproportionality when it does occur.

### 3. Act 35 of 2021:

- Act 35 of 2021 is intended to reduce the incidence of suspension and expulsion in public schools and ensure that, where disciplinary exclusion is necessary, it is applied equitably across Vermont school systems.
- Effective September 10, 2021, suspension and expulsion of students under eight years old is banned, except in the very rare occurrences when the student poses an imminent harm or danger to others in the school.

## Authority of School Personnel

School personnel will consider any unique circumstances on a case-by-case basis when determining whether a change in placement is appropriate for a student with a disability who violates the school's code of student conduct. Those determinations will be consistent with the discipline procedures of the Individuals with Disabilities Education Act (IDEA).

## General

The school principal or their designee, in consultation with the student's special education case manager, are authorized to remove a student with a disability who violates a code of student conduct from the student's current placement to an appropriate interim alternative educational

setting (IAES) for not more than ten consecutive school days (to the extent those alternatives are applied to students without disabilities). The principal/designee, in consultation with the student's special education case manager, may also remove the student for additional period of not more than ten consecutive school days in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change in placement (see section titled change of placement below).

After a student with a disability has been removed from their placement for ten school days in the same school year, the school will provide services for any subsequent days of removal to the extent required under the services section of this policy.

### Additional Authority

Only in some circumstances shall disciplinary procedures for students with disabilities be applied in the same manner and for the same duration as the procedures would be applied to students without disabilities. School personnel in consultation with the special education administrator shall make those decisions.

### Services

A student with a disability who is removed from their current placement shall:

- Continue to receive educational services so as to enable them to continue to participate in the general education curriculum (although in another setting) and to progress toward meeting the goals set out in their IEP, and:
  - Receive, as appropriate, a functional behavioral assessment and behavioral intervention services and modifications, which are designed to address the behavior violation so it does not recur.
  - These services may be provided in an interim alternative educational setting.

The school is not required to provide services during periods of removal to a student with a disability who has been removed from their current placement for ten school days or less in one school year if services are not provided to students without disabilities who have been similarly removed.

After a student with a disability has been removed from their current placement for ten school days in the same school year, school personnel, in consultation with the student's special education case manager, will determine the extent to which services are needed and, if any, the location in which those services will be provided.

However, if the removal is for more than ten consecutive school days or is a change of placement, it is the student's IEP Team that will determine appropriate services and the location in which services will be provided.

## Placement in Interim Alternative Educational Settings

School personnel are authorized to remove a student with a disability 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 student's disability if:

- The student carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the state or a local educational agency.
- The student 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 the state or a local educational agency, or:
- The student has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the state or a local educational agency.

The IEP Team determines the interim alternative educational setting and the appropriate services to be provided. A student placed in an interim alternative educational setting:

- Continues to receive educational services to enable the student to continue to participate in the general curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP, and:
- If the behavior is not a manifestation of the student's disability, the student receives (as appropriate) a functional behavioral assessment, behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.
- If the behavior is a manifestation of the student's disability, the student receives either:
  - A functional behavior assessment, unless our LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implemented a behavioral intervention plan, or:
  - If a behavioral intervention plan already has been developed, a review of the behavioral intervention plan, and modifications to it (as necessary) to address the behavior.

On the date on which the decision is made to place the student in an interim alternative educational setting or to make a removal that constitutes a change of placement for violating a code of conduct, our LEA notifies the parents of that decision and provides the parents a procedural safeguards notice.

When our LEA determines that maintaining the current placement of a student with a disability is substantially likely to result in injury to the student or others, the LEA may request an

expedited due process hearing to change the student's placement to an appropriate interim alternative educational setting for not more than 45 school days. The request for a due process hearing may be repeated if our LEA believes that returning the student to the original placement is substantially likely to result in injury to the student or others.

(34 CFR §§ [300.530](#), [300.530\(g\)](#), [300.530\(h\)](#), [300.531](#), [300.532](#))

## Manifestation Determination Reviews

Within 10 school days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct, our LEA, the parent, and relevant members of the student's IEP Team (as determined by the parent and our local educational agency) review all relevant information in the student's file, including the student's IEP, any teacher observations and any relevant information provided by the parents.

The conduct is determined to be a manifestation of the student's disability if our local educational agency, the parent and relevant members of the student's IEP Team determine that either:

- The conduct in question was caused by, or had a direct and substantial relationship to, the student's disability, or
- The conduct in question was the direct result of our LEA's failure to implement the IEP.

If our LEA, the parent, and relevant members of the student's IEP Team determine the conduct in question was the direct result of our LEA's failure to implement the IEP, we will take immediate steps to remedy those deficiencies.

If the conduct was a manifestation of the student's disability, the IEP Team returns the student to the placement from which the student was removed unless the student has been placed in an interim alternative educational setting or the parent and local educational agency agree to a change of placement as part of the modification of the behavioral intervention plan, and either:

- Conducts a functional behavioral assessment, unless our LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implements a behavioral intervention plan for the student, or
- If a behavioral intervention plan already has been developed, the IEP Team reviews the behavioral intervention plan, and modifies it, as necessary, to address the behavior.

If the conduct was not a manifestation of the student's disability, the student receives (as appropriate):

- A functional behavioral assessment and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur, and

- Educational services to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP.

## Change of Placement

The following events constitute a change in educational placement for students with disabilities:

- The removal is for more than ten consecutive school days, or:
- The student has been subjected to a series of removals that constitute a pattern:
  - Because the series of removals total more than ten cumulative school days in a school year, or:
  - Because the student's behavior is substantially similar to their behavior in previous incidents that resulted in the series of removals that, taken cumulatively, have been determined to have been a manifestation of the student's disability, and:
  - Because of additional factors such as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another.

## Referral to Law Enforcement and Judicial Authorities

When our LEA reports a crime committed by a child with a disability, it ensures copies of the child's special education and disciplinary records are transmitted for consideration by the appropriate authorities to whom it reports the crime. Our LEA transmits copies of the child's special education and disciplinary records only to the extent that the Family Educational Rights and Privacy Act permits transmission.

[\(34 CFR § 300.535\)](#)

## Placement During Appeals

If a parent of a student with a disability disagrees with any decision regarding a disciplinary change in placement or a manifestation determination, they may appeal the decision by requesting a hearing. If our LEA believes that maintaining the current placement is substantially likely to result in injury to the student or others, they may also appeal a decision by requesting a hearing. During such appeal, the student will remain in the placement to which the student was removed pending the decision of the hearing officer or until the expiration of the disciplinary placement, whichever occurs first. The parent and our LEA may agree to a different placement during the appeal.

Unless our LEA and the parents agree in writing to waive the resolution meeting or agree to use the mediation process, our LEA will conduct a resolution meeting within seven days of receiving notice of the parent's due process complaint.

(34 CFR § [300.532](#), [300.533](#))

### Protections for Students Not Yet Eligible for Special Education and Related Services

Our LEA provides the protections asserted for a student under the Individuals with Disabilities Education Act (Part B) to a student who has not been determined to be eligible for special education and related services, who has engaged in behavior that violated a code of conduct of our LEA, if our LEA had knowledge (as determined in accordance with the provisions below) that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred.

Our LEA has knowledge that a student is a student with a disability if before the behavior that precipitated the disciplinary action occurred:

- The parent of the student expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the student, that the student needs special education and related services;
- The parent of the student requested an IEP Team evaluation of the student; or
- The teacher of the student, or other personnel of our LEA, expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education of the LEA or to other supervisory personnel of the LEA.

Our LEA does not have knowledge that a student is a student with a disability if:

- The parent of the student has not allowed a special education evaluation of the student or has refused special education services; or
- Our LEA conducted an IEP Team evaluation and determined that the student was not a student with a disability.

If our LEA does not have knowledge that a student is a student with a disability prior to taking disciplinary measures against the student, the student may be subject to the same disciplinary measures as measures applied to students without disabilities who engaged in comparable behaviors.

If a request is made for an evaluation of a student during the time period in which the student is subjected to disciplinary measures, the evaluation is conducted in an expedited manner. Until the evaluation is completed, the student is maintained in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

If the student is determined to be a student with a disability, taking into consideration information from our evaluation and information provided by the parents, we will provide special education and related services in accordance with the Individuals with Disabilities Education Act (Part B) and state law, including legal requirements relating to discipline and the provision of a free appropriate public education to students with disabilities.

[\(34 CFR § 300.534\)](#)

## Confidentiality of Information

### Confidentiality of Educational Records/Information Policy and Procedures

Our LEA will ensure the confidentiality of educational records and the disclosure of the personally identifiable information of students, adult students and families. These rights regarding the collection, storage and destruction of educational records and personally identifiable information as developed under the Individuals with Disabilities Education Act (IDEA) are protected under the Federal Educational Records Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR 99) and state regulations ([VTSBE Rule 2365.2](#)).

#### Procedures

1. Parents are permitted to inspect and review any education records related to their children that are collected, maintained or used by our LEA under the IDEA.
2. Our LEA will comply with a request to inspect and review without unnecessary delay and in no case more than 45 days after the request has been made.
  - a. The request includes a right to a response from the LEA for explanations and interpretations of records;
  - b. Request copies if failure to provide copies would effectively prevent the parent from exercising their right to inspect and review records; and
  - c. Parent's representative has a right to inspect and review records.
3. Our LEA maintains a record of parties obtaining access to education records excepting parents and authorized employees of the LEA.
4. Parents are only entitled to inspect and review information pertaining to their child when records include information on more than one child.
5. Our LEA will provide parents a written list of the types and locations of education records upon parental request.
6. A parent may not be charged a fee for copies if the fee prevents the parents from exercising their right to inspect and review.
7. A parent may request amendment of education records the parent believes are inaccurate or misleading and our LEA will decide whether to amend the records in a reasonable period of time of receipt of the request. If our LEA refuses to amend the records as

requested, the parents are given notice of their right to a hearing under VTSBE Rule [2365.2.8](#) and [2365.2.9](#).

8. If the result of the hearing is that the information to be amended is determined to be inaccurate, misleading or otherwise in violation of the privacy or other rights of the student, our LEA will amend the records as requested and inform the parents in writing.
9. If the result of the hearing is that the information is not inaccurate, misleading or otherwise in violation of privacy or other rights of the student, our LEA will inform the parent of their right to place a statement commenting on the information or setting forth their disagreement with the decision of the LEA.
10. Our LEA will obtain parental consent prior to disclosing PII to anyone other than officials of participating agencies using the information subject to 1) the participating agency may not further release the information without parental consent or 2) disclosure is otherwise permitted by law:
  - a. Pursuant to a lawful subpoena, provided our LEA makes reasonable attempts to notify parents in advance who may seek a protective order limiting the scope of the subpoena or quashing it;
  - b. The subpoena mandating disclosure specifies 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;
  - c. Disclosure is to law enforcement and the information sought is needed in connection with an emergency or necessary to protect the health and safety of the student or other individuals; and
  - d. If a parent refuses disclosure, our LEA may seek an order from a due process hearing officer permitting disclosure.
11. Safeguards. Our LEA will protect the confidentiality of PII at collection, storage, disclosure and destruction. One LEA official shall be identified as responsible for ensuring confidentiality. Employees collecting or using PII shall be trained or instructed regarding FERPA and Vermont's policies and procedures for the protection of PII. Our LEA shall maintain for public inspection a current listing of names and positions of employees who may have access to PII.
12. For auditing or monitoring purposes, our LEA follows record schedules addressing the life cycle management, retention, and disposition of school-related records [as defined by Vermont State Archives and Records Administration \(VSARA\)](#).
13. For auditing or monitoring purposes, our LEA is required to retain copies of Individualized Educational Programs, Evaluation Plan and Reports, and other material maintained in an educational record for a minimum period of five years from the end of the school year where the document was in effect.
14. Our LEA shall inform parents or the adult student when educational records (exceeded the five-year requirement above) containing personally identifiable information are no longer needed in the provision of special education services to the student and are to be destroyed. Educational records exceeding the five-year requirement may also be destroyed upon request of the parent or adult student.

15. A permanent record of student's name, address, phone number, the years that special education services were provided, and the last IEP and Evaluation Plan and Report should be maintained by our LEA in case of a later need by the student for documentation of a school age disability.

## Students with Disabilities Parentally Placed in Independent Schools or Home Study Programs

Our LEA follows the requirements concerning students parentally placed in independent schools or home study programs as described in the [Vermont Agency of Education's proportionate share requirements](#).

### School Districts Without a Public School

Please refer to [VTSBE Rule 2368.2](#) regarding school districts without a public school.

## Local Educational Agency Reporting to State

Our LEA, in providing for the education of students with disabilities within its jurisdiction, has established and implemented policies, procedures and programs that are consistent with state and federal special education requirements, policies and procedures. Our LEA will modify them to the extent necessary to ensure compliance with the law if the provisions of federal or state rules or regulations are amended, if there is a new interpretation of Individuals with Disabilities Education Act by federal or state courts, or if there is an official finding of noncompliance with federal or state rules or regulations.

[\(34 CFR § 300.201\)](#)

Our LEA files with the Vermont Agency of Education (AOE) information to demonstrate all personnel necessary to carry out the requirements of state and federal special education rules are appropriately and adequately prepared, subject to the requirements of the personnel requirements of the Individuals with Disabilities Education Act and the Elementary and Secondary Education Act. Our LEA provides to the AOE information needed for the AOE to meet its responsibilities under state and federal special education rules, including information related to the performance of students with disabilities participating in our LEA special education programs.

Our LEA provides statements of assurances as required by applicable federal law, including assurances that our LEA, in providing for the students with disabilities within its jurisdiction, has in effect policies, procedures and programs that are consistent with applicable federal law.

[\(34 CFR § 300.211, 300.207\)](#)

## Required Data Collection for General Supervision and Monitoring

Our LEA maintains an education management information system and submits data to the VT Agency of Education. Our LEA's recorded data includes information needed to fulfill reporting requirements for biannual [Child Count collections](#), [Act 173 Special Education Plans](#), disciplinary actions, and statewide assessments. Additionally, our LEA maintains data necessary to determine if significant disproportionality based on race and ethnicity is occurring in our LEA with respect to the identification of students with disabilities, the placement of students in educational settings and the incidence, duration and type of disciplinary actions.

## Appendix A: Attestation Form

As a condition of funding under the Individuals with Disabilities Education Improvement Act of 2004 (IDEA), local educational agencies are required to establish written policies and procedures for implementing federal special education laws. This Vermont Special Education Procedures and Practices Manual has been developed to help local educational agencies meet this requirement.

LEAs must develop or adopt written policies and procedures in a number of different areas, and our LEA has chosen to adopt the model procedures and practices promulgated by the Vermont Agency of Education in order to satisfy these requirements. This document, while comprehensive, does not include every requirement set forth in the IDEA, the regulations implementing IDEA, and/or the Vermont Special Education Rules 2360 series. Our LEA recognizes its obligation to follow these laws, regardless of whether their provisions are restated in the Vermont Special Education Procedures and Practices Manual.

The Vermont Agency of Education recommends that school boards adopt these procedures and practices as recommended by the Vermont School Board Association. The Agency of Education recommends that school boards sign and upload this document on their website and maintain an available copy of this signed attestation for monitoring purposes.

Our LEA, \_\_\_\_\_ hereby adopt the Vermont Special Education Procedures and Practices Manual.

Printed Name of Special Education Director: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name of Superintendent: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Please Note: LEAs who chose to not adopt this document must ensure that their locally developed policies and procedures must minimally align with the content provided in the Vermont Special Education Procedures and Practices manual. The Vermont Agency of Education strongly recommends as best practice that LEAs provide locally developed policies and procedures on their website for monitoring purposes.**