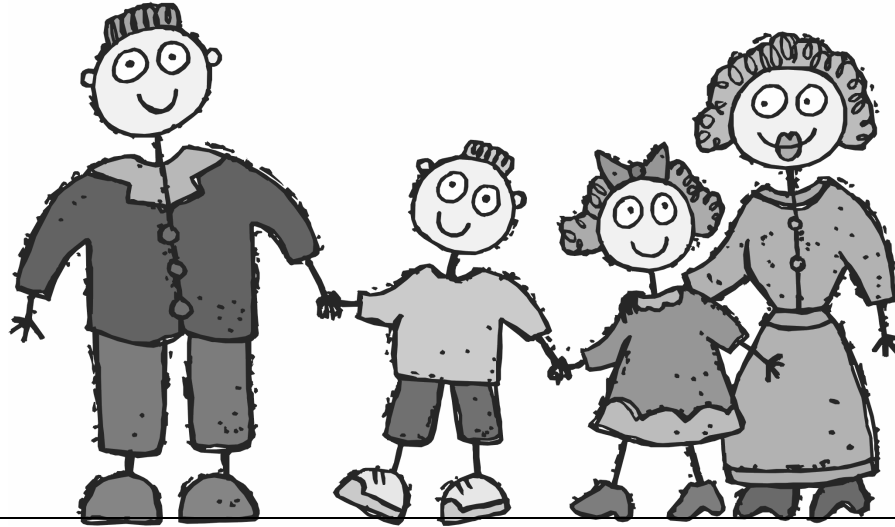


Parents' Rights in Special Education



This document has 8 parts. Distributed as a whole, they meet the Vermont Department of Education's Parental Rights in Special Education Federal notice requirement. In addition, each part is designed to be used individually as supplemental information when needed.

Additional copies are available on line at: www.state.vt.us/educ and by calling 828-5114.

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School _____
Contact _____
Telephone _____

The Vermont Department of Education is an equal opportunity employer and is committed to ensuring that all of its programs and facilities are accessible to all members of the public and that all activities and programs are not discriminatory in design, application and performance.

Part 1 Introduction

Under the federal Individuals with Disabilities Education Act (IDEA) and Vermont Department of Education's Special Education Regulations, parents have specific rights concerning their participation in the special education process. The purpose of this booklet is to inform you of those rights and to provide you with a list of resources to contact for more information. Please note that changes made to federal law in December 2004 are included in the booklet and will be in effect until the Department of Education revises its special education rules.

The Vermont Department of Education prepared this booklet in collaboration with the Vermont Parent Information Center (VPIC). This document may also be found on the Vermont Department of Education's web site at www.state.vt.us/educ and on the VPIC web site at www.vtpic.com.

THE MOST IMPORTANT SPECIAL EDUCATION RIGHTS ENTITLE YOU TO

- be notified about important decisions regarding your child's education
- give your consent before your child is evaluated, before your child receives special education and related services, and before confidential information about your child is released
- participate in meetings about your child's evaluation, eligibility for special education, education program and placement
- have access to your child's education records and to have those records kept confidential
- appeal decisions with which you disagree



YOU MUST RECEIVE A COPY OF YOUR RIGHTS FROM YOUR CHILD'S SCHOOL WHEN

- an evaluation or re-evaluation of your child is being planned
- a meeting takes place to discuss your child's Individualized Education Program (IEP)
- you or the school requests a due process hearing

YOU ARE ENTITLED TO PARENTAL RIGHTS IF YOU ARE

- a biological or adoptive parent
- a guardian (Please note that if a child is in the custody of the Vermont Department Division of Children and Families (DCF), the state cannot be the child's guardian.)
- a person who is acting as a parent, such as a grandparent or step-parent with whom the child lives and who is legally responsible for the child
- an educational surrogate parent who has been appointed by the Vermont Educational Surrogate Parent Program
- a foster parent and have been appointed an educational surrogate parent

TRANSFERRING RIGHTS TO YOUR SON OR DAUGHTER AT AGE 18

At age 18, the parental rights and procedural protections described in this booklet transfer from you to your child, unless he or she has a court-appointed guardian. The school is required to notify your son or daughter about the transfer of rights one year before he or she turns 18. You will continue to receive notice about meetings after your child turns 18 and may attend IEP meetings at the invitation of the school or your son or daughter. In addition, with your son or daughter's consent, you may continue to review and get copies of education records. If your child is 18 years old and in prison, however, you will not receive any notices.

ROLE OF EDUCATIONAL SURROGATE PARENTS



When a child's parents cannot be located or when the child is in the custody of the Commissioner of Vermont Department for Children and Families (DCF), the Commissioner of Education will appoint an educational surrogate parent to act as the child's parent. The educational surrogate parent may not be an employee of any agency involved with the education or care of the child. The child's foster parent may be appointed as a surrogate parent if he or she has completed the Vermont Educational Surrogate Parent training program.

The school or public agency shall continue to refer the child for a surrogate parent, and the State shall make reasonable effort to appoint an educational surrogate parent within 30 calendar days.

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Part 2

Consent, Notice and Education Records

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This section of the booklet provides information about giving your consent, receiving notice from the school and accessing your child's education records.

WHEN IS MY CONSENT REQUIRED?



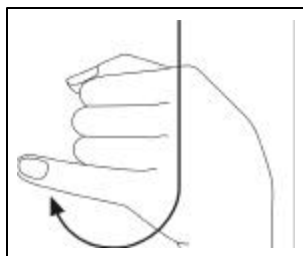
Your voluntary consent is needed

- when your child is evaluated or re-evaluated. Your consent is not required, however, when the school reviews only existing information or gives tests administered to all children.
- when your child is offered initial special education and related services.
- before confidential information from your child's education records is released. There are some exceptions to this rule.

WHAT IF I CHANGE MY MIND OR REFUSE TO GIVE MY CONSENT?

You have the right to revoke your consent for a special education evaluation any time before the school completes new tests and measures described in your child's written evaluation plan. If you do so, the school district may request a due process hearing to show why it is necessary to go ahead with your child's evaluation, and it may also request mediation to try to reach an agreement with you. You also have the right to revoke your consent for special education services before those services begin.

WHAT SHOULD I BE TOLD?



You have the right to be

- fully informed about the activity for which the school is asking your permission
- fully informed about the education records the school wants to release and to whom they will be given
- given a written description of the activity or the education records to be released and understand and agree in writing to the activity or release of information

HOW SHOULD I BE TOLD?

Notice from the school should be in your native language or any other type of communication that you use, including, but not limited to, sign language or Braille. The school's notice must be given in a way that can be understood by the general public. Whenever "written notice" is required, it should be given in writing or sign language, whichever is appropriate.

WHEN IS THE SCHOOL REQUIRED TO NOTIFY ME?

You have the right to be notified in writing before

- the school begins (or refuses) to provide special education services to your child, and
- before the school plans (or refuses) to change your child's identification, evaluation, special education services or placement

WHAT INFORMATION MUST BE INCLUDED IN A NOTICE?

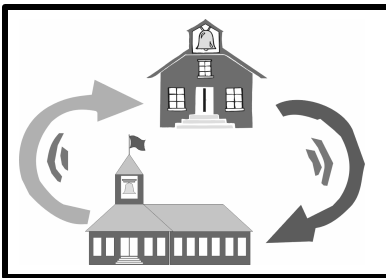
A notice must include



- information about what the school is planning to do and why it is planning to do it
- a description of the options the school considered and why those options were not chosen
- an explanation of each evaluation procedure, report, test and other record the school plans to use in deciding whether your child is eligible for special education services
- information about your right to file an administrative complaint or request mediation or a due process hearing if you disagree with any part of your child's identification, evaluation, education program or placement
- information about where you can get help in understanding your rights

ARE MY CHILD'S EDUCATION RECORDS CONFIDENTIAL?

The school must keep your child's education records confidential. In most cases, your child's records may not be shared without your written consent. The most important exception is that a school may share information about your child with other school staff, including teachers within the school district. These school personnel must have a legitimate education purpose for reviewing the records, such as carrying out your child's IEP.



Schools may share information about your child without your consent when they need to

- provide information to other schools being considered as possible placements for your child, including postsecondary schools when your child has applied for admission or financial aid
- comply with a court order or subpoena
- respond to a health or safety emergency
- report a crime committed by your child to a law enforcement agency
- provide information to the Department of Education

HOW WILL I KNOW WHO HAS SEEN MY CHILD'S RECORDS?

The school must keep records of the people who have seen information about your child, including their names and the dates and reasons they reviewed the files. The school, however, does not have to keep track of when you or authorized school staff examined your child's records.

DO I HAVE THE RIGHT TO REVIEW AND GET COPIES OF MY CHILD'S RECORDS?

Review Records

You have the right to review your child's education records. The school must allow you to review the records within 45 days of your request and without unnecessary delay before any meeting regarding an IEP or a due process hearing. With your written permission, a friend, family member, advocate or attorney may also review your child's records.

You have the right to get copies of the records if failure to provide those copies would prevent you from reviewing them. The school may charge you a fee to copy the records, unless the charge would prevent you from having copies. In addition, you have the right to have information in your child's records explained to you by an education professional, a friend, advocate, attorney or others.

WHAT IF I DISAGREE WITH INFORMATION IN MY CHILD'S RECORDS?

If I Disagree

If you believe the information in your child's records is incorrect, misleading or violates your privacy, you have the right to ask the school to change the records. If the school refuses, you have the right to request a hearing at the school district level to show why the records should be changed. The school must change the records if, as the result of a hearing, it is determined that the information is wrong, misleading or violates your privacy.

You also have the right to add a written statement to the records describing any disagreement you have with any of the information they contain. Your statement will become part of your child's permanent file.

IF I AM SEPARATED OR DIVORCED, WHAT ARE MY SPOUSE'S RIGHTS TO OUR CHILD'S EDUCATION RECORDS?

Both parents may have access to their child's education records, unless one parent's rights regarding the child's education have been limited or terminated by a court order.

This document is one of 8 parts available on line at: www.state.vt.us/educ and by calling 828-5114.

Those parts are

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Part 3

Special Education Evaluations

The purpose of an evaluation is to determine whether your child is eligible for special education services. If your child is found to be eligible, the evaluation can also be used to gather information to help you and the school develop your child's Individualized Education Program (IEP). Parents, schools, the Vermont Department of Education, and other state agencies may refer a child for a special education evaluation. When a referral is made, the school must initiate a comprehensive evaluation unless it believes your child does not have a disability that requires special education services. If the school believes your child does not have a disability that requires special education, you and the referring party will be given written notification and inform you of your right to disagree with their decision.

Before planning the evaluation, the school must send you written notice about what it is planning to do and why it is planning to do it. An Evaluation and Planning Team (EPT), **that includes you**, will develop your son or daughter's evaluation plan. You have the right to a written evaluation plan for your child and to receive a copy of it. The evaluation begins when your consent is given.

As a member of the Evaluation and Planning Team, you must be invited to attend any meetings the school plans regarding your child's evaluation. The school must notify you about meetings early enough so you can make plans to attend. If the proposed meeting date and time are not convenient, you can suggest an alternative. The school should make every effort to try to meet at a time and date convenient to all team members. If you cannot attend a meeting, you may agree to participate in other ways, such as by telephone or video conference.

YOU HAVE THE RIGHT TO



- give information about your child to the evaluation team before the plan is written
- bring someone with you to meetings who you believe has special knowledge regarding your child's special education needs
- have more than one method used in evaluating your child's eligibility for special education
- have an evaluation in all areas related to your child's suspected disability
- have tests given to your child in his or her native language
- to ask and receive new testing if you believe that this additional information is needed in order to determine your child's continuing eligibility for special education .
- a re-evaluation of your child be considered by the school if you or your child's teacher request it.

WHEN DOES THE SCHOOL HAVE TO COMPLETE THE EVALUATION?

After the school receives your written consent, the school has 60 calendar days to complete your child's evaluation and issue a report. If the evaluation will take longer than 60 days, the school must inform you in writing of the expected date of completion and the reason for the delay.

The 60-day timeline does not apply, however, if your child transfers to another school while the special education evaluation is taking place or if you repeatedly fail to bring your child to a scheduled evaluation.

Your child's re-evaluation must take place every three years unless you and the school agree that a re-evaluation is not needed. A re-evaluation may take place more often but not more frequently than once a year, unless you and the school agree otherwise.

The school must complete the three-year re-evaluation by the anniversary date of your child's last evaluation. In addition, the school has the right to reassess your child when it determines that improved academic and functional performance justify a re-evaluation.

Your Written Permission Required

DOES THE SCHOOL NEED MY PERMISSION TO EVALUATE MY CHILD?

If new information is needed, including testing, the school must get your written permission before it carries out a special education evaluation. You have the right to withdraw your consent any time before the school completes new tests and measures described in your child's written evaluation plan. Your consent is not required for an evaluation or re-evaluation when the school only reviews existing information. The school may conduct the re-evaluation without your consent if it can show it took reasonable steps to get your permission and you did not respond.

If you do not consent to an initial evaluation or you ignore the school's notices to obtain your consent, the school has the right to go to a due process hearing to try to evaluate your child. A hearing officer will decide whether the school may or may not go ahead with their plans to evaluate your child.

WHO MAKES THE DECISION ABOUT MY CHILD'S ELIGIBILITY FOR SPECIAL EDUCATION?

After the evaluation is completed, the Evaluation and Planning Team reviews the results and makes a decision about your child's eligibility for special education. If the school holds a meeting to decide eligibility, you must be invited to participate. The school must notify you in writing about the eligibility decision and give you a copy of the Evaluation Plan and Report.

WHAT IF I DISAGREE WITH THE SCHOOL'S EVALUATION?

An Independent Evaluation

If you disagree with the school's evaluation, you have the right to obtain an independent evaluation of your child, conducted by a qualified evaluator who is not a school employee. The school must give you information about where to get an independent evaluation.

You have the right to

- have the independent evaluation and associated expenses paid for by the school, unless the school asks for a due process hearing to show that its evaluation was appropriate
- an independent evaluation at your own expense
- have independent evaluation results considered by the Evaluation and Planning Team when a decision is being made about your child's special education eligibility, program or placement
- have independent evaluation results considered during mediation or a due process hearing

A hearing officer may order an independent evaluation, at no cost to you, as part of a due process hearing.

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Part 4

Individualized Education Program (IEP)

The Individualized Education Program (IEP) is a written plan describing your child's recommended special education and related services. The IEP may also include services on behalf of your child, such as training that you or teachers may need to work more effectively with your child.

Your child's IEP must be reviewed at least once a year. You and the school, however, have the right to review and/or change the IEP more often, if necessary.

WHAT ARE MY RIGHTS AS A MEMBER OF MY CHILD'S IEP TEAM?

**You are a
Member
of the
IEP
Team**

As an IEP Team member, you have the right to

- participate in any meetings to develop the IEP
- be notified of IEP meetings early enough to make arrangements to attend
- be notified about the time, place and purpose of IEP meetings and who will participate
- have meetings at times and places that are convenient for you and the school
- participate in meetings by other means, such as by telephone or video-conferencing, if you cannot attend in person
- receive a copy of your child's written evaluation report and review your child's records before IEP meetings
- bring a friend, advocate or someone else to the meeting who you believe has special knowledge about your child's special education needs

4

Your child's first IEP must be written 30 days after he or she is found eligible for special education services. Before your child receives these initial special education services, the school will notify you and request your written consent. This notice contains information about IEP services your child will receive and where your child will receive them. Each time an IEP is developed or revised you have the right to receive a copy.

You can revoke your consent any time before your child's initial special education services begin. If the school disagrees, it cannot override your refusal to consent to the initial special education services.

CAN A TEAM MEMBER BE EXCUSED FROM ATTENDING MY CHILD'S IEP MEETING

If you and the school agree, in writing, a team member may be excused from attending all or part of your child's IEP meeting when

- the curriculum or related services for which the team member is responsible is not being discussed or changed

- the team member whose curriculum or related service is being discussed provides written information regarding IEP services before the meeting to you and other team members.

DO I HAVE TO REQUEST A MEETING IN ORDER TO MAKE CHANGES TO MY CHILD'S IEP?

Parents have the right to request an IEP meeting to change or improve their child's services. You and the school, however, may now agree **not to hold a meeting** to make a change to the IEP. With your input, the school may develop a written document to attach to the IEP describing the agreed upon changes. You will be given a copy of the attachment for your IEP.

ADDITIONALLY, IF YOU ARE THE PARENT OF A CHILD FROM BIRTH UP TO AGE THREE...

- You have the right to request that your Family, Infant, Toddler Program service coordinator or other representatives of the that system be invited to the first IEP meeting to help with the smooth change into the public school system.

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Part 5

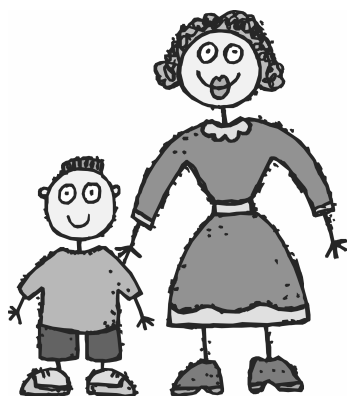
Independent (Private) School Placement

If your child attends an independent school, he or she has certain rights. The term independent school includes private and religious schools. The Vermont Department of Education has approved some independent, non-religious schools to provide regular and/or special education programs.

WHAT RIGHTS DO I HAVE IF MY CHILD IS PLACED IN AN INDEPENDENT SCHOOL BY THE SCHOOL DISTRICT?

If your child is placed in an independent school as part of his or her IEP, you have the same rights as if your child were placed in public school.

IF I DECIDE TO PLACE MY CHILD IN AN INDEPENDENT SCHOOL, WHAT RIGHTS DO I HAVE?



Your school district does not have to pay for tuition or the costs of special education and related services if it offered a free appropriate public education to your child before you enrolled him or her in an independent school. You have the right to request a due process hearing, however, if you believe that the program offered by the school district was not appropriate. A hearing officer will decide whether or not the school made an appropriate education available to your child.

You will be reimbursed for the costs of the independent school if the hearing officer finds that the school failed to offer your child an appropriate education and if the independent school is suitable. It is important to note that the school district cannot reimburse you for tuition at a religious school.

Reimbursement may be reduced or denied in the following circumstances

- if you do not let the school know at the last IEP meeting or at least 10 business days before enrollment that you are rejecting the public school placement and that you intend to enroll your child in an independent school at public expense
- before you remove your child from public school, the school district notifies you of its intent to evaluate your child, and you do not make your child available for an evaluation

[Note: You do not have to follow the above two rules if doing so would result in serious emotional or physical harm to your child or if you were not notified of these requirements.]

The School District's Obligation

DOES THE SCHOOL DISTRICT HAVE ANY OBLIGATION TO CHILDREN WITH DISABILITIES PLACED BY THEIR PARENTS IN AN INDEPENDENT SCHOOL?

Changes to the law now require the school district where the independent school is located to find, identify and evaluate all children with disabilities placed in those schools, including religious schools. During 2005-2006, Vermont school districts in which parents live will turn over responsibility to children eligible for special education. Parents will be notified of the changes to this process that will begin in the 2006-2007 school year.

Currently, your school district is obligated to find, identify and evaluate all children with disabilities placed in independent schools. Your school district must decide how it will use a portion of its federal funds to serve students with disabilities enrolled in independent schools. If it chooses to provide services to your child, these services will be described in a Services Plan, not an IEP.

If you place your son or daughter in an independent school, your child has no individual right to an IEP. Your child also has no right to receive any of the special education or related services he or she would be entitled to if your child were in public school or placed by the school district in an independent school.

Home School Placement

School districts are not required to provide special education or related services to children enrolled in a home school program. If it chooses, the school district may offer these services to your child. A written Services Plan must be developed for any child receiving special education and related services in a home school program. A Services Plan is not an IEP, which means you and your child are not entitled to protections under special education law. (See Part 7 of this booklet.)

In Vermont, home-schooled children can enroll in courses and take part in activities at their public school. If your child needs special education services to access or perform in these activities at the public school, you and the school will develop an IEP just for these courses or activities.

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Part 6

Discipline

This section describes the protections you and your child have if the school proposes to suspend or expel your child. This section also describes the responsibilities the school has when your child's behavior violates the school's code of student conduct.

HOW DO REGULAR SCHOOL DISCIPLINE POLICIES APPLY TO MY CHILD WHO IS ON AN IEP?

Your child is entitled to the same protections and procedures that are available to non-special education students. If your child has been suspended for 10 or fewer school days in the school year, the school does not have to provide your child with any special or regular education services during the suspension.

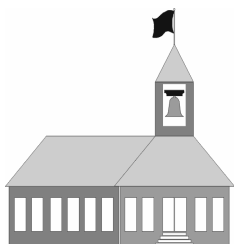
CAN MY CHILD BE SUSPENDED FROM SCHOOL MORE THAN ONCE?

Yes, if your child has already been suspended once, he or she can be suspended for other instances of misbehavior. If as a result of the disciplinary action, your child's IEP placement is changed, special education procedures apply.

WHEN IS A REMOVAL FROM SCHOOL CONSIDERED A CHANGE OF PLACEMENT

A change of placement occurs when

- your child has been suspended for more than 10 consecutive school days or
- when your child receives a series of suspensions that add up to more than 10 days and are part of a pattern because
 - of the length and the amount of time your child is suspended
 - of the closeness in time of suspensions to one other
 - of the similarity of the reasons for the suspensions



When your child is suspended for 10 school days in a school year, the school must provide services that enable him or her to progress in the general education curriculum and meet IEP goals.

WHAT SHOULD HAPPEN WHEN THE SCHOOL PLANS TO SUSPEND MY CHILD FOR MORE THAN 10 DAYS?

**More
than
10
Days**

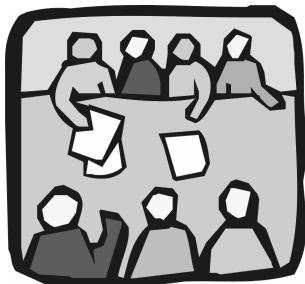
You must be notified in writing on the date that the school decides to suspend your child for more than 10 consecutive school days. You must also be notified when there has been a pattern of suspensions that adds up to more than 10 cumulative school days. The notice should include information about your parental rights.

When a suspension results in a change of placement, the IEP team must decide whether your child's behavior is related to his or her disability. This process is called a manifestation determination. The manifestation determination must occur no later than 10 school days after the school decides to change your child's placement.

A manifestation determination requires the IEP team to review all relevant information in your child's file, including the IEP, teacher observations, and information you provide. The team must then determine if

- your child's behavior was caused by or related to the child's disability, or
- the behavior was caused by the school's failure to implement your child's IEP.

WHAT WILL HAPPEN IF THE TEAM DECIDES THAT THE BEHAVIOR IS RELATED TO MY CHILD'S DISABILITY?



If the IEP team decides that your child's behavior is related to the disability, the team must stop any proposed disciplinary action and conduct what is called a functional behavioral assessment and implement a behavior intervention plan. If the team has already developed a behavior plan, they must review and update it, if necessary. The team may also decide to revise the IEP or change the location of the services offered in order to address your child's behavior.

Your child must also return to his or her original IEP placement, unless you or the school agrees otherwise. (Please note. Children placed in an alternative setting due to drugs, weapons, or causing serious bodily injury will remain in that setting.)

WHAT WILL HAPPEN IF THE TEAM FINDS THAT THE BEHAVIOR IS NOT RELATED TO MY CHILD'S DISABILITY?

The school may discipline your child using regular school discipline policies and procedures if the IEP team decides that there is no relationship between your child's disability and the behavior in question. Your child, however, has a right to continue receiving special education and related services, and the school must ensure that your child is able to make progress toward meeting IEP goals and in the general education curriculum.

When disciplining your child for 10 school days or more, the school must give his or her special education and discipline records to the persons making the final decision about the disciplinary action. These persons may include school board members. As part of the disciplinary action, the school may decide to place your child in an alternative education placement or other setting.

WHAT IF I DON'T AGREE WITH THE TEAM DECISION ABOUT MY CHILD'S BEHAVIOR OR PLACEMENT?

You have the right to request a due process hearing if you disagree with the results of the manifestation determination or the decision regarding your child's education placement. The hearing will be held promptly, and the decision will be sent to you within 45 days of your request. While the hearing takes place, your child will remain in the last agreed-upon IEP placement, unless he or she was placed in an alternative education setting by the school due to special circumstances. You and other members of the IEP team may agree to change your child's placement while waiting for the due process decision.

WHEN CAN THE SCHOOL PLACE MY CHILD IN AN ALTERNATIVE EDUCATION SETTING?

If your child has a weapon or has, sells, uses or solicits illegal drugs at school or at a school function, or if he or she causes serious bodily injury, the school can convene an IEP meeting and recommend a change of placement or the school personnel can place your child in an interim alternative education setting (IAES) for up to 45 calendar days. While in the alternative education setting, your child must

- have access to the general education curriculum
- be able to meet his or her IEP goals and objectives
- receive services and accommodations that address the behavior and help him or her correct that behavior in the future

If you disagree with the alternative education setting decision, you have the right to request an expedited due process hearing, which will take place within 20 school days of your request. The hearing officer will convene a hearing, and within 10 school days after the hearing, make a decision. Your child will remain in the alternative educational setting until the hearing officer makes a decision.

Due Process Hearing

WHERE WILL MY CHILD BE EDUCATED IF I REQUEST A DUE PROCESS HEARING?

When you request a due process hearing, your child will receive special education services in his or her current placement. If your child's last placement was an interim alternative education setting, he or she will stay there until the hearing officer makes a decision or until the 45-day time limit for such a placement ends. You and the school, however, may agree to another placement during the hearing process.

WHAT HAPPENS IF MY CHILD'S 45-DAY PLACEMENT IS COMPLETED WHILE THE HEARING TAKES PLACE?

If your child's 45-day placement ends while the hearing takes place, the IEP team must choose another placement. If the team fails to pick another setting, your child will return to his or her original IEP placement. This is where your child was receiving services before being placed in the interim alternative education setting. The hearing officer, however, has the right to order a different setting. During the due process hearing, you and the school may agree on an appropriate education setting for your child.

WHAT HAPPENS IF MY CHILD COMMITS A CRIME?

The school may report to the appropriate authorities that your child has committed a crime. With or without your consent in emergency situations, the school may make copies of your child's special education and disciplinary records available to the authorities.

DO THE DISCIPLINE RULES APPLY TO MY CHILD IF HE OR SHE HAS NOT YET BEEN DETERMINED TO BE ELIGIBLE FOR SPECIAL EDUCATION?

In order for your child be protected by the discipline rules for students with disabilities, the school must have had prior knowledge that your child had a suspected disability before it disciplined your child for breaking a school rule.

The school will be considered to have prior knowledge about your child's suspected disability if

Discipline Rules and Suspected Disabilities

- you expressed concerns to school district administrators or teachers about your child's need for special education in writing (or orally if you are unable to write due to special circumstances or a disability)
- you requested an evaluation of your child
- your child's teacher or other school staff expressed concern about your child's behavior or performance to the special education director or other personnel involved in the school's special education or child find referral system it is important to note, if you have not allowed your child to be evaluated or receive special education services, or if your child has been evaluated and not found eligible for special education, the school cannot be held responsible for having prior knowledge of your child's disability.

MAY I REQUEST A SPECIAL EDUCATION EVALUATION WHILE THE SCHOOL IS DISCIPLINING MY CHILD?

You have the right to request an evaluation to determine whether your child is eligible for special education during the time he or she is being disciplined. The school must complete this evaluation in an "expedited" manner or give it "top priority". Until the evaluation is finished, your child will stay in the placement decided by the school, which can include suspension or expulsion without any education services. If the school decides your child is eligible, it must provide special education and related services.

This document is one of 8 parts available on line at: www.state.vt.us/educ and by calling 828-5114.

Those parts are

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| 1. Introduction | 5. Independent (Private) School Placement & Home Schoolers |
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Part 7

Resolving Disagreements Between Parents and Schools

As the parent of a child receiving special education services, you have the right to disagree with decisions made by the school regarding your child's identification, eligibility, evaluation, Individualized Education Program (IEP) or placement. The following information describes methods for resolving disputes you may have with the school. They are mediation, resolution session, due process hearing and administrative complaint.

MEDIATION



Mediation is a free, voluntary process that will be used only if you and the school agree to take part. The mediator's job is to help you and the school district come to an agreement, not to make decisions for you. You or the school may end mediation at any time. Agreeing to mediation will not delay or deny access to a due process hearing or any other dispute resolution rights described herein.

You may ask for mediation at any time concerning a variety of disagreements you may have with the school. The Department of Education will offer mediation when you or the school asks for a due process hearing, but you are not required to accept it. Mediation will be scheduled at a time and place convenient to you and the school district and it will not cost you or the school any money.

A trained, impartial mediator who is not an employee of the school district and has no conflict of interest with your situation will conduct the mediation. The Vermont Department of Education has a list of qualified mediators who are assigned, on a rotating basis, to work with parents and school staff. You and the school district may agree on a different mediator. You may bring an advocate, support person and/or family members to mediation. Your school district may bring its lawyer but only if you bring one, too.

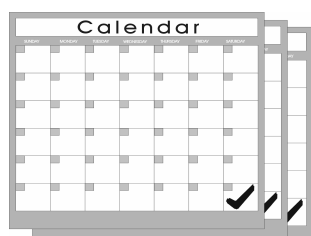
The information that you and the school district discuss during mediation is confidential. What you and the school district say cannot be repeated in a later due process hearing or court proceeding. If you and the school district reach an agreement, it will be put in writing and will be enforceable in any State court of a Federal district court.

To request mediation, write to the Vermont Department of Education, Special Education Mediation Service, 120 State Street, Montpelier, VT 05620-2501.

**Trained,
Impartial
Mediator**

7

DUE PROCESS HEARING



A due process hearing is a formal review conducted by a trained, impartial hearing officer appointed by the Vermont Department of Education. After reviewing evidence provided by you and the school district, the hearing officer will issue a written decision. The decision will include the hearing officer's findings and conclusions about the legal issues in your situation. This decision is final unless you or the school district appeal it.

To file a request for a due process hearing, you must file a Notice For A Due Process Hearing form with the Commissioner of Education, Vermont Department of Education, 120 State Street, Montpelier, VT 05620-2501. You may obtain a copy of the form from the Department's web site or by contacting the Department at (802) 828-3136.

Upon receiving a copy of the Due Process Hearing notice from the Department, the school has **15 calendar days** to hold a resolution session meeting (described below) with you and other IEP team members or it can decide to challenge the content of your notice. A hearing officer then has **5 calendar days** to decide whether the notice you filed contains all of the requirements listed below:

Notice to Request a Due Process Hearing

- your child's name, address (where he or she lives) or available contact information in the case of a homeless child, and the name of the school the child is attending;
- a description of the problem, including relevant facts; and
- how you believe the problem might be resolved, if you have any ideas about how to solve it.

If the hearing officer finds your notice to be insufficient, you may be able to correct it if

- the school gives its written consent and has the opportunity to hold a resolution session meeting to resolve the complaint, or
- the hearing officer gives permission. The hearing officer's permission will only be effective up to five days before the due processing hearing occurs

The timeline for a due process hearing will start all over again once you file a corrected Due Process Notice form.

DUE PROCESS TIMELINES

You have the right to request a due process hearing within two years of the date the problem occurred or two years from the date that you discovered the problem. If you request due process because you want to be reimbursed for the costs of placing your child in an independent school (without prior approval of the IEP team), you have 90 days from the date of placement to request a hearing.

At least five business days before the hearing, you and the school must inform each other about any evaluations that have been completed and any recommendations that will be used as evidence at the hearing. You and the school district have the right to object to any information that was not made available five business days before the hearing.

You also have the right to

- be informed about free or low-cost legal or other expert services
- be represented by an attorney and advised by others who have knowledge or training regarding your child with a disability
- receive a list of hearing officers and their qualifications
- have your child attend the hearing
- have the hearing open to the public
- have the hearing scheduled at a time and place reasonably convenient to you, your child and the school district.
- ask a state or federal court for reimbursement of attorney's fees and costs, if the hearing officer's decision is in your favor
- have your child remain in his or her current education placement during the due process hearing, unless you and the school agree otherwise
- have your child initially placed in a public school with your consent until the hearing process is completed
- give evidence, ask questions and have witnesses present
- receive a final decision within 45 days after the Commissioner of Education received your request for a due process hearing, unless the hearing officer extends the deadline at the request of you or the school district
- receive a written record of the hearing, or at your request, an electronic, verbatim record of the hearing
- receive written, or at your request, electronic due process findings and decisions at no cost to you

Due Process Rights

Right to Appeal

WHAT CAN I DO IF I DON'T AGREE WITH THE HEARING OFFICER'S DECISION?

You have the right to appeal an unfavorable due process decision by filing a complaint in federal or state court. You will have 90 days after receiving the decision to appeal to Vermont state court or federal court. The court will make its decision based on a review of the due process hearing record and new information presented in court.

Other rights you have in the appeal process include the right

- to review all the hearing records and review them
- to ask a state or federal court for reimbursement of attorney's fees and costs if you win
- to have your child stay in his or her current education placement while your appeal is being considered, unless you and the school agree to other arrangements. (Different rules may apply if your child is in an interim alternative educational setting because of a discipline problem.)

If your complaint involves public school admission, you have the right to have your child placed in a public school, with your consent, until the hearing process is completed.

ATTORNEYS' FEES

The court may award reasonable attorneys' fees

- to a prevailing party who is the parent
- to a prevailing party who is the VT DOE or school district against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or
- to a prevailing party who is the VT DOE or the school district against the attorney of a parent, or against the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

RESOLUTION SESSION

Within 15 calendar days of receiving the Due Process Hearing Notice from the Department of Education, the school district must hold a resolution session meeting with you and relevant members of the IEP Team to try and resolve your complaint. The resolution session meeting

- must include a school representative with decision-making authority,
- will not include a school attorney unless you bring an attorney, and
- will not take place if you and the school district agree in writing to waive the meeting or agree to use the mediation process.

If you and the school district resolve the complaint, you will both sign a written agreement that is legally binding in a court of law. You and the school district have the right to change your minds within three days after the agreement is signed.

You have the right to move forward with a due process hearing if you and the school district do not resolve the complaint. An impartial hearing officer has 45 days to issue a decision.

ADMINISTRATIVE COMPLAINTS

Right to File a Complaint With the Commissioner

You have the right to file a complaint with the Vermont Commissioner of Education if you believe your child's special education rights have been violated. An organization or a group of parents may also file a complaint if it believes that there are violations affecting a number of children. The Commissioner will appoint Department staff to investigate the complaint, and a decision must be issued within 60 days of receipt of the complaint, unless an extension is granted. You will receive a copy of the decision.

To investigate the complaint, the Department of Education may, but is not required to, conduct an on-site review. The Department will also give you an opportunity to present additional information, orally or in writing. Its staff will review all relevant information and make a decision about whether the school district has violated federal or state special education laws. If your administrative complaint is also the subject of a due process hearing, the Department will not investigate any part of the complaint that is being addressed as part of the due process hearing.

To file an administrative complaint, write to the Commissioner, Vermont Department of Education, 120 State Street, Montpelier, VT 05620-2501. If you are unable to write, you may use other means of communication to request mediation, due process or an administrative complaint. The Department of Education's legal section at (802) 828-3136 will help you.

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Part 8 Resources

If you would like help understanding your rights or information about the Federal Individuals with Disabilities Education Improvement Act (IDEIA) or Vermont Special Education Regulations, please contact the resources listed below.

Your School District's Special Education Administrator

He or she has information about your rights and special education services in your community. Contact your superintendent's office to find out the name and telephone number of this individual.

Disability Law Project (DLP)

DLP provides legal support regarding special education and disability issues.

Addison, Chittenden, Franklin, Grand Isle
264 North Winooski Avenue, POB 1367
Burlington, VT 05402
(800) 889-2047
(800) 747-5022

Washington, Orange, Lamoille
7 Court Street, POB 606
Montpelier, VT 05601
(800) 789-4195

Rutland and the Bennington Areas
57 North Main Street
Rutland, VT 05701
(800) 769-7459

Northeast Kingdom
177 Western Avenue, Suite 1
St. Johnsbury, VT 05819
(800) 769-6728

Windham and Windsor Areas
56 Main Street, Suite 301
Springfield, VT 05156
(800) 769-9164

Vermont Parent Information Center (VPIC)

VPIC supports and informs families of children with special needs, including assisting parents in understanding the special education process.

600 Blair Park Road
Williston, VT 05495-7589
(800) 639-7170
(802) 876-5315 voice/TTY
www.vtpic.com

Vermont Federation of Families for Children's Mental Health

Provides support and information
(800) 639-6071

Vermont Department of Education, Student Support Services

The Department assists schools and families with special education issues.

120 State Street
Montpelier, VT 05620-2501
(802) 828-5114
www.state.vt.us/educ

Vermont Educational Surrogate Parent Program

This program addresses educational needs of children in custody or children whose parents cannot be located.

Vermont Department of Education
120 State Street
Montpelier, VT 05620-2501
(802) 828-5108

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