

Vermont Laws and State Board of Education Rules Governing Suspension and Expulsion

16 V.S.A. 1162

For misconduct that:

- occurs at school, on a bus or at a school-sponsored activity and makes the continued presence of the student harmful to the welfare of the school
- occurs somewhere else and direct harm to the welfare of the school can be demonstrated
- somewhere else and poses a clear and substantial interference with another student's equal access to education

A principal or superintendent may

- according to State Board rules (4311, 4212, 4312 below)
- seek approval of the school board to expel for the remainder of school year or 90 school days, whichever is longer

A principal or superintendent can always

- follow due process procedures and
- immediately remove a student who
 - poses a continuing danger to people or property
 - poses an ongoing threat of disrupting the academic progress of the school
- expel a student who brings a firearm to school

Schools are encouraged to provide alternative education services or programs to students during the period of suspension or expulsion

16 V.S.A. 1163

A student who transfers to another school during a period of suspension or expulsion can apply to the new school which will determine whether to continue the suspension or expulsion

16 V.S.A. 1165

Requires schools to adopt school district policy consistent with state board procedures that provide for education, referral for treatment, counseling and rehabilitation of students who are involved with alcohol or drug abuse on school property or at school functions.

State Board Rule 4212 requires schools to have a policy on alcohol and drugs that at minimum:

- considers needs of students with problems as well as the right of the majority of students to an education
- provides for a support and referral system for students in distress due to their own or another's use of alcohol or other drugs.
- provide procedures for the immediate handling of any situation including student use including the administration of emergency first aid
- direct school staff to immediately notify administrators of any violation of the law, including illegal possession or distribution of drugs or alcohol.

The administration shall follow the appropriate legal procedures and due process of law for discipline

- designates staff available for consultation with a student whose behavior or performance may indicate a problem with alcohol or drug abuse and to determine the need for further screening, education, counseling, or referral for treatment

16 V.S.A. 1166

Requires school boards to have policy that at minimum:

- requires any student who brings a firearm to school to be referred to law enforcement
- requires the superintendent or principal, after approval of the school board following the hearing, to expel the student for not less than one calendar year unless modification is appropriate based on a finding that:
 - the student was unaware that he or she had brought a firearm to school or possessed a firearm at school
 - the student did not intend to use the firearm to threaten or endanger others
 - the conduct is a manifestation of the student's disability
 - the student does not present an ongoing threat to others and expulsion would not be in the student's best interests

State Board Rule 4311

When a student is subject to disciplinary action, the school district shall afford the student due process procedures as follows:

In all cases of short-term suspension from school, which is generally regarded as 10 days or less, the student and his or her parent/guardian shall be given an opportunity for an informal hearing before an appropriately designated school official. Except for cases set forth in paragraph 4311.3, the hearing must precede the suspension and the district shall provide:

- (1) notice of the charges;
- (2) explanation of the evidence against the student;
- (3) opportunity for the student to tell his or her side of the story; and
- (4) decision in writing to the parent/guardian.

In cases of a long term suspension which is generally more than 10 days unless a school district establishes a shorter period, or an expulsion, the student and his or her parent/guardian shall be given an opportunity for a formal hearing before the school board and the district shall provide:

- (1) written notice of the following:
 - (a) nature of charges against the student;
 - (b) date, time and place of hearing;
 - (c) right to legal representation;
 - (d) possible penalties involved;
- (2) opportunity to present evidence;
- (3) opportunity to cross-examine witnesses; and
- (4) decision in writing to parent/guardian

When a student, because of his or her conduct or condition, is an immediate threat to himself or herself, others, property or educational environment, the school district may take whatever action is appropriate under the circumstances, including, but not limited to, immediate suspension pending a hearing as soon as possible thereafter. In addition, in cases where a student brings a weapon (as defined in the federal Gun-Free School Act) to school, the school district must refer the student to a law enforcement agency and expel the student for a period of not less than one calendar year unless such expulsion is modified in accordance with the provision of 16 VSA §1166(b)(2) in circumstances such as but not limited to:

- (a) the student is unaware that he or she has brought a weapon to school,
 - (b) the student did not intend to use the weapon to threaten or endanger others,
 - (c) the student is disabled and the misconduct is related to the disability,
 - (d) the student does not present an ongoing threat to others and a lengthy expulsion would not serve the best interest of the student.
- (2) In situations where a student with a disability brings a weapon to school, the provisions of regulation 4312(2) shall apply. In any such situation, an opportunity for a hearing prior to an expulsion must be provided prior to the expulsion, pursuant to 16 VSA §1166(b)(2)

State Board Rule 4312

In addition to the general disciplinary procedures found within Rule 4311, the following procedures apply to children who are qualified individuals with disabilities as defined by Section 504 of the Rehabilitation Act of 1973

(1) A Section 504 student shall not be removed from his or her current educational placement for disciplinary reasons for more than 10 consecutive school days in a school year unless the following procedures have been completed:

(a) A re-evaluation, as defined by 34 C.F.R. §104.35; and Vermont Department of Education - State Board of Education Manual of Rules and Practices Student Safety, Page 3

(b) A determination by the student's Section 504 team that the conduct is not a manifestation of his or her disability.

(2) A Section 504 student shall not be removed from his or her current educational placement for disciplinary reasons for more than 10 cumulative days in a school year when the removals constitute a change in placement as defined in Rule 2360.2(d)(1) unless the following procedures have been completed:

(a) A re-evaluation, as defined by 34 C.F.R. §104.35; and

(b) A determination by the student's Section 504 team that the conduct is not a manifestation of his or her disability.

(3) When it is determined by a student's 504 team that the conduct is not a manifestation of the student's qualifying disability, the student may be disciplined in the same manner, and subject to the same disciplinary consequences, as a non-disabled child, including suspension or expulsion without the provision of services.

(4) When it is determined by a student's Section 504 team that the conduct is a manifestation of his or her qualifying disability, a change in program or placement may be implemented by the student's Section 504 team and the student's Section 504 team

may respond to the conduct by designing, amending and/or enforcing a plan of behavior management.

(5) If, at the time of the occurrence of conduct that gives rise to consideration of removal of a student from his or her current educational placement for more than 10 consecutive school days in a school year, the student is believed to be a qualified individual with a disability under Section 504, a Section 504 evaluation shall be completed prior to imposition of the removal.

(a) If the evaluation results in a determination that the student is a qualified individual with a disability under Section 504, the discipline procedures in this rule shall be followed.

(b) If the evaluation results in a determination that the student is not a qualified individual with a disability under Section 504, the discipline procedures in Rule 4311 shall be followed.

(6) If, at the time of the occurrence of conduct that gives rise to consideration of removal of a student who is believed to be a qualified individual with a disability under Section 504 for more than 10 cumulative school days in a school year, and the removals constitute a change in placement as defined in Rule 2360.2(d)(1), a Section 504 evaluation shall be completed prior to imposition of the removal.

(a) If the evaluation results in a determination that the student is a qualified individual with a disability under Section 504, the discipline procedures in this rule shall be followed.

(b) If the evaluation results in a determination that the student is not a qualified individual with a disability under Section 504, the discipline procedures in Rule 4311 shall be followed.

(7) If a child who is a qualified individual under Section 504 possesses or carries a weapon, as defined in Rule 4313.9(a), to school or at a school function, he or she may be placed in an interim alternative educational setting (IAES) in accordance with the procedures set forth in Rule 4313.9 and Rule 1253. The student's 504 team shall determine the IAES, and the services provided in the IAES, in accordance with the procedures set forth in Rule 4313.9. It is the intent of this section to discipline a child who is a qualified individual under Section 504 in the same manner as students who are eligible for special education when they possess weapons at school or at school functions.

(8) When a parent disagrees with disciplinary action taken by a school district, the parent may request an impartial due process hearing, and the procedures in Rules 2365.1.6(c) through 2365.1.9 shall apply. In addition to or in lieu of a due process hearing a parent may file a complaint with the U.S. Department of Education Office for Civil Rights.

(9) A hearing officer may order a change in the placement of a child who is a qualified individual under Section 504 to an appropriate IAES for not more than 45 calendar days, if the hearing officer, in an expedited due process hearing:

(a) Determines that the school district has demonstrated by substantial evidence, which for purposes of this section shall mean a preponderance of the evidence, that maintaining the current placement of the child is substantially likely to result in injury to the child or others;

(b) Considers the appropriateness of the child's current placement;

(c) Considers whether the school district has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and

(d) Determines that the IAES that is proposed by school personnel will enable the child to continue to progress in the general curriculum. The services provided to and modifications made for the child in the IAES shall be designed to address and prevent the child's offending behavior.

(10) This Rule (4312) shall not apply when a responsible agency takes disciplinary action against a Section 504 student if:

(a) The misconduct for which the student is being disciplined pertains to the use or possession of illegal drugs or alcohol at school or at a school function; and

(b) The student is currently engaging in the use of alcohol or illegal drugs. In this instance, the Section 504 student shall be disciplined in accordance with Rule 4311.

State Board Rule 4313

In addition to the general disciplinary procedures found within Rule 4300, the following procedures apply to children eligible for special education services: 4313.1 Authority of School Personnel.

(a) Case-by-case determination. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.

(b) General.

(1) Under this section, the school principal/designee, in consultation with the special education case manager may remove a child with a disability who violates a code of student conduct from their current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under Rule 4313.7).

(2) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the school district must provide services to the extent required under paragraph (d) of this section.

(c) Additional authority. For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to paragraph (e) of this section, school personnel in consultation with the special education administrator may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in paragraph (d) of this section.

(d) Services.

- (1) Except as provided in paragraphs (d)(3) and (d)(4) of this section, a child with a disability who is removed from the child's current placement pursuant to paragraphs (b), (c), or (g) of this section must--
 - (i) Continue to receive educational services, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and
 - (ii) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, which are designed to address the behavior violation so that it does not recur.
- (2) The services required by paragraph (d)(1) of this section may be provided in an interim alternative educational setting.
- (3) A school district need not provide services during periods of removal under paragraph (b) of this section to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if services are not provided to a child without disabilities who has been similarly removed.
- (4) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under Rule 4313.7, school personnel, in consultation with the child's special education case manager, determine the extent to which services are needed under paragraph (d)(1) of this section, if any, and the location in which services, if any, will be provided.
- (5) If the removal is for more than 10 consecutive school days or is a change of placement under Rule 4313.7, the child's IEP Team determines appropriate services under paragraph (d)(1) of this section and the location in which services will be provided.

(e) Manifestation determination

- (1) Except for removals that will be for not more than 10 consecutive school days and will not constitute a change of placement under Rule 4313.7, within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine--
 - (i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
 - (ii) If the conduct in question was the direct result of the LEA's failure to implement the IEP.
- (2) The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP

Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met.

- (f) Determination that behavior was a manifestation. If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must—
 - (1) Either-
 - (i) Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or
 - (ii) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and (2) Except as provided in paragraph (g) of this section, return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.
- (g) Special circumstances. School personnel may remove a student 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 child's disability, if the child—
 - (1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA;
 - (2) 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 an SEA or an LEA; or
 - (3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.
- (h) Notification. Not later than the date on which the decision to take disciplinary action is made, the LEA must notify the parents of that decision, and provide the parents a copy of their Parents' Rights in Special Education.