



# **Vermont Compilation of School Discipline Laws and Regulations**

Prepared: April 3, 2019

## ***Introduction***

This compilation presents school discipline-related laws and regulations for U.S. states, U.S. territories, and the District of Columbia, and, where available, links to education agency websites or resources related to school discipline and student conduct. The discipline laws and regulations presented in this compilation have been categorized by type of specific discipline issue covered, according to an organizational framework developed by the National Center for Safe and Supportive Learning Environments (NCSSE). For example, one major category encompasses all laws or regulations governing states or territories that mandate specific disciplinary sanctions (such as suspension) for specific offenses (such as drug possession on school grounds). The school discipline laws and regulations were compiled through exhaustive searches of legislative websites that identified all laws and regulations relevant to each specific category. Compiled materials were subsequently reviewed by state education agency (SEA) representatives in the 50 states, Washington D.C., and the U.S. territories.

Discipline categories were not mutually exclusive. Laws and regulations often appeared across multiple categories. For jurisdictions with more extensive laws covering a breadth of topical areas, relevant sections were excerpted from the larger legislative text for inclusion in the appropriate discipline category. Laws, ordered by chapter and section number, appear first within each category followed by regulations. All laws and regulations listed within categories in the compilation also appear in the sources cited section of the document, which lists laws by chapter and section number and title, and where available, includes active hyperlinks to source websites supported or maintained by state legislatures. Additional links to government websites or resources are provided at the end of this document.

## ***Notes & Disclaimers***

To the best of the preparer's knowledge, this Compilation of School Discipline Laws and Regulations is complete and current as of April 2019. Readers should also note that the information in this document was compiled from individual sources that are created by each jurisdiction and which are maintained and updated with varying frequencies. Readers should consult the source information provided directly in order to check for updates to laws and regulations reported in this document or to conduct further research.

For further information, including definitions of the different policy categories, please refer to the [Discipline Laws and Regulations Compendium](#) posted on the Center's website.

*Prepared by:*

**Child Trends**

7315 Wisconsin Avenue  
Suite 1200W  
Bethesda, Maryland 20814

**EMT Associates, Inc.**

1631 Creekside Drive  
Suite 100  
Folsom, California 95630



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#### **Title 16. Education**

##### **Chapter 1. Administration Generally**

###### **Subchapter 1. General Provisions**

[§ 11.](#) Classifications and definitions

###### **Subchapter 8. Tobacco Use Policy**

[§ 140.](#) Tobacco use prohibited on public school grounds

##### **Chapter 3. State Board of Education**

###### **Subchapter 1. General Provisions**

[§ 165.](#) Education quality standards; equal educational opportunities; independent school meeting education quality standards

##### **Chapter 9. School Districts**

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##### **Chapter 23. Courses of Study**

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[§ 909.](#) Tobacco use, alcohol and drug abuse prevention education curriculum

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- [§ 1128.](#) Legal pupil taken to school; nonresident child living in district  
[§ 1129.](#) Jurisdiction of nonresidents

#### **Subchapter 4: Effective Discipline Measures**

- [§ 1161a.](#) Discipline  
[§ 1162.](#) Suspension or expulsion of students  
[§ 1163.](#) Transfer of suspension or expulsion to other schools  
[§ 1165.](#) Alcohol and drug abuse  
[§ 1166.](#) Possession of a firearm at school  
[§ 1167.](#) School resource officer; memorandum of understanding

### **Title 33. Human Services**

#### **Chapter 52. Delinquency Proceedings**

##### **Subchapter 2: Petition**

- [§ 5225.](#) Preliminary hearing; risk assessment  
[§ 5232.](#) Disposition order

### **HB95**

- Section 35. Agency of education; restorative justice practices

### **Vermont Regulations**

The State of Vermont contracts with LexisNexis to provide free public access to the Vermont Regulations (<http://www.lexisnexis.com/hottopics/codeofvtrules/>). Users must agree to terms and conditions prior to use of the site. All listed statutes are searchable by title and chapter number or by using key search terms.

### **Agency 22. Department of Education**

#### **Sub-Agency 000. General**

##### **Chapter 003. State Board Rule 2000 Education Quality Standards**

##### **Section 2121. Professional Resources**

- 2121.5. Tiered system of support

##### **Section 2122. Learning Environment**

- 2122.1. School facilities and the learning environment

##### **Section 2124. Reporting of Results**

2124. Reporting of results

##### **Section 2125. Continuous Improvement Plan**

2125. Continuous improvement plan

## **Chapter 006. Special Education Rules (2360-2369)**

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## ***General Provisions***

### **Authority to develop and establish rules of conduct**

#### **LAWS**

##### **16 V.S.A. § 140. Tobacco use prohibited on public school grounds.**

No person shall be permitted to use tobacco or tobacco substitutes as defined in 7 V.S.A. § 1001 on public school grounds or at public school sponsored functions. Public school boards may adopt policies that include confiscation and appropriate referrals to law enforcement authorities.

##### **16 V.S.A. §570. Harassment, hazing, and bullying prevention policies.**

(b) Prevention policies. Each school board shall develop, adopt, ensure the enforcement of and make available in the manner described under subdivision 563(1) of this title harassment, hazing, and bullying prevention policies that shall be at least as stringent as model policies developed by the commissioner. Any school board that fails to adopt one or more of these policies shall be presumed to have adopted the most current model policy or policies published by the commissioner.

(d) Duties of the commissioner. The commissioner shall:

- (1) Develop and, from time to time, update model harassment, hazing, and bullying prevention policies; and
- (2) Establish an advisory council to review and coordinate school and statewide activities relating to the prevention of and response to harassment, hazing, and bullying. The council shall report annually in January to the state board and the house and senate committees on education. [...]

##### **16 V.S.A. §1161a. Discipline.**

(a) Each public and each approved independent school shall adopt and implement a comprehensive plan for responding to student misbehavior. To the extent appropriate, the plan shall promote the positive development of youth. The plan shall include:

- (1) The school's approach to classroom management and response to disruptive behavior, including the use of alternative educational settings.
- (2) The manner in which the school will provide information and training to students in methods of conflict resolution, peer mediation, and anger management.
- (3) Procedures for informing parents of the school's discipline policies, for notifying parents of student misconduct, and for working with parents to improve student behavior.
- (4) The school's response to significant disruptions, such as threats or use of bombs or weapons.
- (5) A description of how the school will ensure that all staff and contractors who routinely have unsupervised contact with students periodically receive training on the maintenance of a safe, orderly, civil, and positive learning environment. The training shall be appropriate to the role of the staff member being trained and shall teach classroom and behavior management, enforcement of the school's discipline policies, and positive youth development models.
- (6) A description of behaviors on and off school grounds that constitute misconduct, including harassment, bullying, and hazing, particularly those behaviors that may be grounds for expulsion. The plan shall include a description of misconduct as listed in subdivisions 11(a)(26)(A)-(C) and (32) of this title that, although serious, does not rise to the level of harassment or bullying as those terms are defined therein.
- (7) Standard due process procedures for suspension and expulsion of a student.



**16 V.S.A. § 1165. Alcohol and drug abuse.**

(c) Each school district shall adopt its own policy consistent with the State Board's rules setting forth: recommended procedures for education; referral for treatment, counseling, and rehabilitation; and standards consistent with due process of law for discipline, suspension, or dismissal of students in accordance with section 1162 of this title. Nothing in this section is intended to mandate local school districts to employ counselors for treatment or rehabilitation.

**16.V.S.A. § 1166. Possession of a firearm at school.**

(b) Each school board shall adopt and implement policies regarding a student who brings a firearm to or possesses a firearm at school, which at a minimum shall include:

(1) A provision that any student who brings a firearm to or possesses a firearm at school shall be referred to a law enforcement agency. In addition to any other action the law enforcement agency may take, it may report the incident to the Department for Children and Families.

(2) A provision that the superintendent or principal, with the approval of the school board following opportunity for a hearing, shall expel from the school for not less than one calendar year any student who brings a firearm to or possesses a firearm at school; provided, however, the school board may modify the expulsion on a case-by-case basis. Modifications may be granted in circumstances such as:

(A) The student is unaware that he or she has brought a firearm to or possessed a firearm at school.

(B) The student did not intend to use the firearm to threaten or endanger others.

(C) The student has a disability and the misconduct is related to the student's disability.

(D) The student does not present an ongoing threat to others and a lengthy expulsion would not serve the best interests of the student.

**REGULATIONS**

**22 000 003.2122.1. School facilities and the learning environment.**

Each school shall maintain a safe, orderly, civil, flexible and positive learning environment, which is free from hazing, harassment and bullying and based on sound instructional and classroom management practices and clear discipline and attendance policies that are consistently and effectively enforced.

The design and operation of the school facilities shall be in full compliance with all state and federal fire, health, and safety, chemical and architectural standards.

Each school's comprehensive plan for responding to student misbehavior, as required by 16 V.S.A. §1161a(a), shall address student behavior, language, classroom attendance, clothing and treatment of property, as well as consequences for violations of policy, and shall be clear and consistently enforced.

Each school shall observe due process requirements as set forth in Rule 4300 et seq.

**22 000 009.4212. Policy requirements.**

School districts shall adopt an alcohol and drug abuse policy which shall contain the following:

4212.1. Statement of philosophy.

This policy shall be concerned with the health and well-being of all students and the policy shall take into consideration the individual needs of students with problems as well as the right of the majority of students to an education. [...]

# Scope

## LAWS

### **1161a. Discipline.**

(a) Each public and each approved independent school shall adopt and implement a comprehensive plan for responding to student misbehavior. To the extent appropriate, the plan shall promote the positive development of youth. The plan shall include:

(6) A description of behaviors on and off school grounds that constitute misconduct, including harassment, bullying, and hazing, particularly those behaviors that may be grounds for expulsion. The plan shall include a description of misconduct as listed in subdivisions 11(a)(26)(A)-(C) and (32) of this title that, although serious, does not rise to the level of harassment or bullying as those terms are defined therein.

### **16 V.S.A. §1162. Suspension or expulsion of pupils.**

(a) A superintendent or principal may, pursuant to policies adopted by the school board that are consistent with State Board rules, suspend a student for up to 10 school days or, with the approval of the board of the school district, expel a student for up to the remainder of the school year or up to 90 school days, whichever is longer, for misconduct:

(1) On school property, on a school bus, or at a school-sponsored activity when the misconduct makes the continued presence of the student harmful to the welfare of the school;

(2) Not on school property, on a school bus, or at a school-sponsored activity where direct harm to the welfare of the school can be demonstrated; or

(3) Not on school property, on a school bus, or at a school-sponsored activity where the misconduct can be shown to pose a clear and substantial interference with another student's equal access to educational programs.

(b) Nothing contained in this section shall prevent a superintendent or principal, subject to subsequent due process procedures, from removing immediately from a school a student who poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process of the school, or from expelling a student who brings a weapon to school pursuant to section 1166 of this title.

(c) Principals, superintendents, and school boards are authorized and encouraged to provide alternative education services or programs to students during any period of suspension or expulsion authorized under this section.

## REGULATIONS

### **22 000 036.4500. Use of restraint and seclusion in schools.**

4500.2. Applicability.

These rules are applicable to all learning environments that receive public funding, or over which the Vermont Department of Education has regulatory authority.

## Communication of policy

### LAWS

#### **16.V.S.A. § 570f. Harassment; notice and response.**

(a)(1) An educational institution that receives actual notice of alleged conduct that may constitute harassment shall promptly investigate to determine whether harassment occurred. After receiving notice of the alleged conduct, the school shall provide a copy of its harassment policy, including its harassment investigation procedure, to the alleged victim and the alleged perpetrator. If either the alleged victim or the alleged perpetrator is a minor, the copy of the policy shall be provided to the person's parent or guardian. [...]

#### **16 V.S.A. §570. Harassment, hazing, and bullying prevention policies.**

(c) Notice. Annually, prior to the commencement of curricular and cocurricular activities, the school board shall provide notice of the policy and procedures developed under this subchapter to students, custodial parents or guardians of students, and staff members, including reference to the consequences of misbehavior contained in the plan required by section 1161a of this title. Notice to students shall be in age-appropriate language and should include examples of harassment, hazing, and bullying.

#### **16 V.S.A. §1161a. Discipline.**

(a) Each public and each approved independent school shall adopt and implement a comprehensive plan for responding to student misbehavior. To the extent appropriate, the plan shall promote the positive development of youth. The plan shall include:

- (3) Procedures for informing parents of the school's discipline policies, for notifying parents of student misconduct, and for working with parents to improve student behavior.

### REGULATIONS

#### **22 000 036.4506. Annual Notification.**

Annually, at or before the beginning of the academic year, each school (defined in 4500.3(10)) shall inform all school personnel, and parents of students enrolled in the school of the policies pertaining to the use of physical restraint and seclusion and the intent to emphasize the use of positive behavioral interventions and supports and its intention to avoid the use of physical restraint or seclusion to address targeted student behavior.

## ***In-School Discipline***

### **Use of multi-tiered discipline approaches**

#### **LAWS**

No relevant laws found.

#### **REGULATIONS**

No relevant regulations found.

### **Teacher authority to remove students from classrooms**

#### **LAWS**

No relevant laws found.

#### **REGULATIONS**

No relevant regulations found.

### **Alternatives to suspension**

#### **LAWS**

No relevant laws found.

#### **REGULATIONS**

No relevant regulations found.

### **Use of corporal punishment**

#### **LAWS**

##### **16 V.S.A. §1161a. Discipline.**

(b) For the purpose of this chapter, corporal punishment means the intentional infliction of physical pain upon the body of a pupil as a disciplinary measure.

(c) No person employed by or agent of a public or approved independent school shall inflict or cause to be inflicted corporal punishment upon a student attending the school or the institution. However, this section does not prohibit a person from using reasonable and necessary force:

- (1) To quell a disturbance;
- (2) To obtain possession of weapons or other dangerous objects upon the person of or within the control of a student;
- (3) For the purpose of self defense; or
- (4) For the protection of persons or property.

#### **REGULATIONS**

No relevant regulations found.

## **Use of student and locker searches**

### **LAWS**

No relevant laws found.

### **REGULATIONS**

No relevant regulations found.

## **Other in-school disciplinary approaches**

### **LAWS**

#### **HB95. Section 35. Agency of education; restorative justice practices.**

The Agency of Education shall explore the use of restorative and similar practices regarding school climate and culture, truancy, bullying and harassment, and school discipline. The Agency shall consider the research that demonstrates that restorative approaches lead to reductions in absenteeism, suspensions, and expulsions and to improved educational outcomes.

### **REGULATIONS**

No relevant regulations found.

## ***Out-of-School and Exclusionary Discipline: Suspensions, Expulsion, Restraint and Seclusion, and Alternative Placements***

### **Grounds for possible suspension or expulsion**

#### **LAWS**

##### **16 V.S.A. §1161a. Discipline.**

(a) Each public and each approved independent school shall adopt and implement a comprehensive plan for responding to student misbehavior. To the extent appropriate, the plan shall promote the positive development of youth. The plan shall include:

(6) A description of behaviors on and off school grounds that constitute misconduct, including harassment, bullying, and hazing, particularly those behaviors that may be grounds for expulsion. The plan shall include a description of misconduct as listed in subdivisions 11(a)(26)(A)-(C) and (32) of this title that, although serious, does not rise to the level of harassment or bullying as those terms are defined therein.

(7) Standard due process procedures for suspension and expulsion of a student.

##### **16 V.S.A. §1162. Suspension or expulsion of pupils.**

(a) A superintendent or principal may, pursuant to policies adopted by the school board that are consistent with State Board rules, suspend a student for up to 10 school days or, with the approval of the board of the school district, expel a student for up to the remainder of the school year or up to 90 school days, whichever is longer, for misconduct:

(1) On school property, on a school bus, or at a school-sponsored activity when the misconduct makes the continued presence of the student harmful to the welfare of the school;

(2) Not on school property, on a school bus, or at a school-sponsored activity where direct harm to the welfare of the school can be demonstrated; or

(3) Not on school property, on a school bus, or at a school-sponsored activity where the misconduct can be shown to pose a clear and substantial interference with another student's equal access to educational programs.

(b) Nothing contained in this section shall prevent a superintendent or principal, subject to subsequent due process procedures, from removing immediately from a school a student who poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process of the school, or from expelling a student who brings a weapon to school pursuant to section 1166 of this title.

(c) Principals, superintendents, and school boards are authorized and encouraged to provide alternative education services or programs to students during any period of suspension or expulsion authorized under this section.

#### **REGULATIONS**

No relevant regulations found.

## Grounds for mandatory suspension or expulsion

### LAWS

#### **16.V.S.A. § 1166. Possession of a firearm at school.**

(a) In this section, the terms "to school" and "firearm" shall have the same meaning that the terms have in 18 U.S.C. § 921. The school board may expand the definitions, however, provided they remain consistent with federal law.

(b) Each school board shall adopt and implement policies regarding a student who brings a firearm to or possesses a firearm at school, which at a minimum shall include:

(1) A provision that any student who brings a firearm to or possesses a firearm at school shall be referred to a law enforcement agency. In addition to any other action the law enforcement agency may take, it may report the incident to the Department for Children and Families.

(2) A provision that the superintendent or principal, with the approval of the school board following opportunity for a hearing, shall expel from the school for not less than one calendar year any student who brings a firearm to or possesses a firearm at school; provided, however, the school board may modify the expulsion on a case-by-case basis. Modifications may be granted in circumstances such as:

(A) The student is unaware that he or she has brought a firearm to or possessed a firearm at school.

(B) The student did not intend to use the firearm to threaten or endanger others.

(C) The student has a disability and the misconduct is related to the student's disability.

(D) The student does not present an ongoing threat to others and a lengthy expulsion would not serve the best interests of the student.

(c) Annually at a time and on a form determined by the Secretary, each superintendent shall provide the Secretary with a description of the circumstances surrounding expulsions imposed under this section, the number of students expelled, and the type of firearm involved.

### REGULATIONS

No relevant regulations found.

## Limitations, conditions or exclusions for use of suspension and expulsion

### LAWS

#### **16 V.S.A. §1162. Suspension or expulsion of pupils.**

(a) A superintendent or principal may, pursuant to policies adopted by the school board that are consistent with State Board rules, suspend a student for up to 10 school days or, with the approval of the board of the school district, expel a student for up to the remainder of the school year or up to 90 school days, whichever is longer, for misconduct:

(1) On school property, on a school bus, or at a school-sponsored activity when the misconduct makes the continued presence of the student harmful to the welfare of the school;

(2) Not on school property, on a school bus, or at a school-sponsored activity where direct harm to the welfare of the school can be demonstrated; or

(3) Not on school property, on a school bus, or at a school-sponsored activity where the misconduct can be shown to pose a clear and substantial interference with another student's equal access to educational programs.

(b) Nothing contained in this section shall prevent a superintendent or principal, subject to subsequent due process procedures, from removing immediately from a school a student who poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process of the school, or from expelling a student who brings a weapon to school pursuant to section 1166 of this title.

(c) Principals, superintendents, and school boards are authorized and encouraged to provide alternative education services or programs to students during any period of suspension or expulsion authorized under this section.

## **REGULATIONS**

No relevant regulations found.

## **Administrative procedures related to suspension and expulsion**

## **LAWS**

### **16 V.S.A. §1163. Transfer of suspension or expulsion to other schools.**

(a) If a student transfers from one Vermont public or independent school to another, then upon application by the student and after a review of whether the school can provide the student with appropriate services, the new school may choose to continue a suspension or expulsion imposed by the original school.

(b) During a period of suspension or expulsion imposed under section 1162 of this title, a student, or parent or guardian, shall not be subject to the provisions of subchapter 3 of this chapter regarding compulsory attendance at school unless the conditions of the suspension or expulsion include participation in a program in the school or an alternative program outside the school. Further, nothing in this section shall prohibit a suspended or expelled student from applying to a different Vermont public or independent school during the period of suspension or expulsion and attending if accepted.

(c) A school district that provides for the education of a suspended or expelled student by paying tuition to a public or approved independent school may, at the discretion of the school board, provide for the education of the student during the period of suspension or expulsion by paying tuition to another public or approved independent school.

## **REGULATIONS**

### **22 000 006. 2365.1.6.17. Expedited Due Process Hearings.**

(a) An expedited due process hearing procedure shall be available for disciplinary issues in accordance with Rule 4313.3.

(b) The expedited procedure shall provide a full due process hearing consistent with the requirements of Rules 2365.1.6.2(c) and (g), 2365.1.6.3, 2365.1.6.4, 2365.1.6.7, 2365.1.6.8, 2365.1.6.10 through 2365.1.6.16, but under a restricted time schedule as set out in subsections (c) - (j) of this section.

(c) Expedited hearings shall:

(1) Not exceed two days; and

(2) Be scheduled to be heard within 20 school days where the issue before the hearing officer will be whether there is a substantial likelihood of injury to self or others if the child is returned to the placement from which the child was removed.



(d) Upon being appointed, the hearing officer shall immediately arrange with the parties two days of hearing to occur within 20 school days of the filing of a complaint under Rule 2365.1.17(c)(2). At the same time, the hearing officer shall schedule an expedited resolution session to be held no later than seven days of the receipt of the written complaint. Unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the complaint, the due process hearing may proceed. The hearing officer shall schedule a prehearing conference prior to the hearing.

(e) At least five business days prior to the hearing, each party shall disclose to all other parties all evaluations completed by that date and evidence to be offered at the hearing, and recommendations based on the offering party's evaluations that the party intends to use at the hearing. Any party to the hearing has the right to request that the hearing officer prohibit the introduction of evidence at the hearing that has not been disclosed to that party at least five business days before the hearing.

(f) Except for the timelines in subsections (c)(2), (d), (e), and (i), the hearing officer may waive any of the procedures in this section in a case, but only to the extent necessary to preserve the full and fair nature of the due process hearing. At the agreement of both parties, the hearing officer may reduce the timelines in subsections (c)(2), (d), (e), and (h).

(g) The hearing officer shall render a decision, including findings of fact and conclusions of law.

(h) The hearing officer shall mail a written decision to the parties by first class mail within 10 school days following the hearing.

(i) Any party aggrieved by a decision of the hearing officer may appeal the decision as provided in Rule 2365.1.8.

#### **22 000 006. 2365.1.8. Finality of a Due Process Hearing Decision; Appeal.**

(a) The decision of a hearing officer is final unless appealed to a state or federal court of competent jurisdiction.

(b) Parties have right to appeal the hearing decision by filing a civil action in a federal district court or a state court of competent jurisdiction in accordance with Rule 2365.1.9.

#### **22 000 009.4311. Procedures.**

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

4311.1 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 the last 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;
- (4) Decision in writing to the parent/guardian.

4311.2 In cases of a long term suspension which is generally more than 10 days unless a school district establishes a shorter period, 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;
- (4) Decision in writing to parent/guardian.

#### 4311.3

(1) 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 provisions of 16 V.S.A. § 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 V.S.A. § 1166(b)(2).

#### **22 000 009.4312. Discipline Procedures for Children Who are Not Eligible for Special Education Services, but Who Are or May Be Qualified Individuals with Disabilities under Section 504 of The Rehabilitation Act of 1973 (29 U.S.C. § 794; 34 C.F.R. § 104 et seq.).**

In addition to the general disciplinary procedures found within Rule 4311, and in accordance with 34 C.F.R. §104.36, the following procedures apply to children who are qualified individuals with disabilities as defined by Section 504 of the Rehabilitation Act of 1973 (hereinafter Section 504).

(1) A Section 504 child 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) Are-evaluation, as defined by 34 C.F.R. §104.35; and
- (b) A determination by the child's Section 504 team that the conduct is not a manifestation of his or her disability.

(2) A Section 504 child 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) Are-evaluation, as defined by 34 C.F.R. §104.35; and
- (b) A determination by the child's Section 504 team that the conduct is not a manifestation of his or her disability.

(3) When it is determined by a child's 504 team that the conduct is not a manifestation of the child's qualifying disability, the child 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 child'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 child's Section 504 team and the child'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 child from his or her current educational placement for more than 10 consecutive school days in a school year, the child 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 child 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 child 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 child 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 child 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 child 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 child'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 children 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 LEA, 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 LEA 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 LEA 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 child if:

- (a) The misconduct for which the child is being disciplined pertains to the use or possession of illegal drugs or alcohol at school or at a school function; and
- (b) The child is currently engaging in the use of alcohol or illegal drugs.

In this instance, the Section 504 child shall be disciplined in accordance with Rule 4311.

#### **22 000 009.4313.1 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 child conduct.

(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.

(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 child conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) shall review all relevant information in the child'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 shall 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 shall--

(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.

#### **22 000 009.4313.2. Determination of setting.**

The interim alternative educational setting referred to in Rule 4313.1(c) and (g) is determined by the IEP Team.

### **22 000 009.4313.3. Appeal.**

(a) General. The parent of a child with a disability who disagrees with any decision regarding placement under Rules 4313.1 and 4313.2, or the manifestation determination under Rule 4313.1 (e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may request a hearing.

(b) Authority of hearing officer.

(1) A hearing officer in an impartial due process hearing hears, and makes a determination regarding, an appeal requested under paragraph (a) of this section.

(2) In making the determination under paragraph (b)(1) of this section, the hearing officer may--

(i) Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of Rule 4313.1 or that the child's behavior was a manifestation of the child's disability; or

(ii) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

(3) The procedures under paragraphs (a) and (b)(1) and (2) of this section may be repeated, if the LEA believes the child would be dangerous if returned to the original placement.

(c) Expedited hearing.

(1) Whenever a hearing is requested under paragraph (a) of this section, the procedures of Rule 2365.1.6.17 shall be followed and the parents and LEA involved in the dispute shall have an opportunity for an impartial due process hearing consistent with the requirements of the rules relating to Resolution Sessions and Impartial Due Process Hearings, except as provided in paragraph (c)(2) through (5) of this section.

(2) The LEA shall arrange for an expedited hearing, which shall occur within 20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing.

(3) Except as provided in a written waiver of the resolution session or in an agreement to mediate

(i) A resolution session meeting shall occur within seven days of the date the hearing is requested, and

(ii) The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of receipt of the hearing request.

(4) The decisions on expedited due process hearings are appealable consistent with those rules associated with due process hearing appeals.

### **22 000 009.4313.4. Placement during appeals.**

When an appeal under Rule 4313.3 has been requested by either the parent or the LEA, the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in Rule 4313.1(c) or (g), whichever occurs first, unless the parent and the SEA or LEA agree otherwise.

### **22 000 009.4313.5. Protections for children not yet eligible for special education and related services.**

(a) General. A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated a code of child conduct, may assert any of the protections provided for in this part if the LEA had knowledge (as determined in accordance with

paragraph (b) of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(b) Basis of knowledge. An LEA shall be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred--

(1) The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;

(2) The parent of the child requested an evaluation of the child pursuant to the rules relating to Procedures for Evaluation and Determination of Eligibility; or

(3) The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency in accordance with the agency's established child find or special education referral system.

(c) Exception. A LEA would not be deemed to have knowledge under paragraph (b) of this section and the child would not receive special education protections available only to children with a disability or suspected of having a disability, if:

(1) The parent of the child:

(i) Has not allowed an evaluation of the child pursuant to special education evaluation procedures; or

(ii) Has refused services under this part; or

(2) The child has been evaluated and determined not to be a child eligible for special education.

(d) Conditions that apply if no basis of knowledge.

(1) If an LEA does not have knowledge that a child is a child with a disability (in accordance with paragraphs (b) and (c) of this section) prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engaged in comparable behaviors consistent with paragraph (d)(2) of this section.

(2) (i) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under Rule 4313.1, the evaluation shall be conducted in an expedited manner.

(ii) Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

(iii) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with this part, including the requirements of Rules 4313.1 through 4313.7 and Section 1412(a)(1)(A) of the Individuals with Disabilities Education Improvement Act, as amended.

## **In-school suspension**

### **LAWS**

No relevant laws found.

### **REGULATIONS**

No relevant regulations found.

## Return to school following removal

### LAWS

No relevant laws found.

### REGULATIONS

No relevant regulations found.

## Use of restraint and seclusion

### LAWS

#### **16.V.S.A. §1167. School resource officer; memorandum of understanding.**

(a) Neither the State Board nor the Agency shall regulate the use of restraint and seclusion on school property by a school resource officer certified pursuant to 20 V.S.A. § 2358.

(b) School boards and law enforcement agencies are encouraged to enter into memoranda of understanding relating to:

- (1) The possession and use of weapons and devices by a school resource officer on school property; and
- (2) The nature and scope of assistance that a school resource officer will provide to the school system.

### REGULATIONS

#### **22 000 036.4500. Use of restraint and seclusion in schools.**

4500.1. Statement of Purpose.

The purposes of these rules are to:

- a. Create and maintain a positive and safe learning environment in schools;
- b. Promote positive behavioral interventions and supports in schools; and
- c. Ensure that students are not subjected to inappropriate use of restraint or seclusion.

4500.2. Applicability.

These rules are applicable to all learning environments that receive public funding, or over which the Vermont Department of Education has regulatory authority

4500.3. Definitions.

For purposes of these rules, the following definitions apply:

1. Behavioral Intervention Plan means a plan that details strategies to address behaviors that impede learning, or are ongoing, and do not readily respond to general intervention or classroom management techniques, by teaching pro-social skills and other positive replacement behaviors. The plan may include positive strategies, program or curricular modifications, and supplementary aids and supports required to address problem behaviors.
2. Chemical Restraint means a drug, medication or chemical used on a student to control behavior or restrict movement that is not:
  - a. Prescribed by a student's licensed physician for the standard treatment of a student's medical or psychiatric condition; and
  - b. Administered as prescribed by the licensed physician.

3. Functional Behavioral Assessment means the analysis of a student's behavior patterns before, during, and after rule-breaking or other inappropriate behavior for the purpose of guiding the development of a behavioral intervention plan.

4. Mechanical Restraint means the use of any device or object that restricts a student's movement or limits a student's sensory or motor functions unless under the direction of a healthcare professional for medical or therapeutic purposes.

The term does not include devices implemented by trained school personnel, or utilized by a student for the specific and approved therapeutic and safety purposes for which such devices were designed including:

- a. Restraints for medical immobilization,
- b. Adaptive devices or mechanical supports used to achieve proper body position, balance or alignment;
- c. Vehicle safety restraints including a seat belt or harness used for balance or safety on a car or bus; or
- d. Seat belts in wheelchairs or on toilets.

7. Physical Restraint means the use of physical force to prevent an imminent and substantial risk of bodily harm to the student or others. Physical restraint does not include:

- a. Momentary periods of physical restriction by direct person-to-person contact, accomplished with limited force and designed either
  - i. To prevent a student from completing an act that would result in potential physical harm to himself/herself or another person; or
  - ii. To remove a disruptive student who is unwilling to leave the area voluntarily;
- b. The minimum contact necessary to physically escort a student from one place to another;
- c. Hand-over-hand assistance with feeding or task completion; or
- d. Techniques prescribed by a qualified medical professional for reason of safety or for therapeutic or medical treatment.

8. Positive Behavioral Interventions and Supports means an approach to preventing and responding to targeted behavior that:

- a. Is based on evidence-based practices;
- b. Is proactive and instructional, rather than reactive;
- c. Can operate on individual, group, classroom, or school wide levels;
- d. Includes a system of continual data collection; and
- e. Relies on data-driven decisions.

9. Prone Physical Restraint means holding a student face down on his or her stomach using physical force for the purpose of controlling the student's movement.

12. Seclusion means the confinement of a student alone in a room or area from which the student is prevented or reasonably believes he or she will be prevented from leaving. Seclusion does not include time-out where a student is not left alone and is under adult supervision.

### **22 000 036.4501. Prohibitions.**

4501.1 School personnel and contract service providers are prohibited from imposing on a student any of the following as defined in rule 4500.3:

- a. Mechanical restraint,



- b. Chemical restraint,
- c. Any physical restraint, escort or seclusion that restricts or limits breathing or communication, causes pain or is imposed without maintaining direct visual contact.

4501.2 Physical restraint or seclusion shall not be used:

- a. For convenience of staff;
- b. As a substitute for an educational program;
- c. As a form of discipline or punishment;
- d. As a substitute for inadequate staffing or training;
- e. In response to a student's use of profanity or other verbal or gestural display of disrespect; or
- f. In response to a verbal threat unaccompanied by demonstrated means of or intent to carry out the threat.

4501.3 The restraints and seclusion prohibited by these Rules shall not be considered "reasonable and necessary force" as that term is used in 16 VSA §1161a(c).

4501.4 Schools may have policies and procedures for the use of physical restraint and seclusion in school-wide safety plans, provided such plans are consistent with these Rules.

## **22 000 036.4502. Permissible Use of Restraint and Seclusion.**

4502.1 Permissible Use of Physical Restraint

Physical restraint, not otherwise prohibited by these Rules, may be used only:

- a. When a student's behavior poses an imminent and substantial risk of physical injury to the student or others;
- b. Within the limits set forth in 16 VSA § 1161 a;
- c. Less restrictive interventions have failed or would be ineffective in stopping such imminent danger of physical injury or property damage;
- d. In accordance with a school-wide safety plan that is consistent with these rules; and
- e. In a manner that is safe, proportionate to and sensitive to the student's:
  - i. Severity of behavior;
  - ii. Chronological and developmental age;
  - iii. Physical size;
  - iv. Gender;
  - v. Ability to communicate;
  - vi. Cognitive ability; and
  - vii. Known physical, medical, psychiatric condition, and personal history, including any history of physical, emotional or sexual abuse or trauma.

4502.1.1 Prone and supine physical restraints are more restrictive than other forms of physical restraint and may be used only when the student's size and severity of behavior require such a restraint because a less restrictive restraint has failed or would be ineffective to prevent harm to the student or others.

4502.2 Permissible Use of Seclusion

Seclusion, not otherwise prohibited by these rules, may be used only:

- a. When a student's behavior poses an imminent and substantial risk of physical injury to the student or others;

- b. When less restrictive interventions have failed or would be ineffective in stopping such imminent risk of physical injury;
- c. As a temporary intervention;
- d. When physical restraint is contraindicated;
- e. When there is no known developmental, medical, psychological or other contraindication to its use;
- f. When the student is visually monitored at all times by an adult; and
- g. In a space large enough to permit safe movement that is adequately lit, heated, ventilated, free of sharp or otherwise dangerous objects; and in compliance with all fire and safety codes.

4502.3 In rare circumstances where the use of physical restraint or seclusion may be necessary due to a student's pattern of dangerous behavior that is not responsive to less restrictive interventions, physical restraint and/or seclusion may be included in an individual safety plan only if all of the following conditions apply:

- a. School personnel have reviewed and agreed to the safety plan;
- b. The use of physical restraint and seclusion complies with these Rules;
- c. The student has a documented history showing a series of behaviors in the preceding six (6) months that have created an imminent and substantial risk of physical injury to the student or others in the school;
- d. A comprehensive, data-driven, functional behavioral assessment has been conducted;
- e. A behavioral intervention plan, emphasizing positive behavioral interventions and supports, has been implemented;
- f. The educational planning team, IEP team or Section 504 team has reviewed the student's program and placement to determine whether it is sufficient to meet the student's unique needs;
- g. The criteria for use are clearly identified;
- h. Any contraindications for use are identified;
- i. Staff implementing the individual safety plan have received training from a state- recommended training program;
- j. The parents are fully informed of the inherent risks of using restraint and seclusion;
- k. The parents provide informed consent to the use of restraint and/or seclusion, which shall be revocable at any time; and
- l. The ongoing need for an individual safety plan is reviewed and revised, as appropriate, and in any event at least annually.

4502.3.1 Any restraint or seclusion imposed as a result of an individual safety plan is subject to all the reporting, documentation and debriefing requirements set forth in 4503, 4504 and 4505 below.

4502.4 Physical restraint or seclusion shall only be imposed:

- a. By school personnel or contract service providers who have been trained to provide the selected intervention unless, due to the unforeseeable nature of the danger of the circumstance, trained personnel are not immediately available;
- a. When a restrained student is monitored face-to-face by school personnel or contract service providers; or
- b. If personnel safety is significantly compromised by face-to-face monitoring, or the student is in seclusion, school personnel or a contract service provider are in direct visual contact with the student.

4502.5 Physical restraint or seclusion shall be terminated as soon as:

- a. The student demonstrates that he/she is in unnecessary pain or significant physical distress indicating a possible need for emergency medical assistance or that his/her breathing or communication is compromised; or
- b. The student's behavior no longer poses an imminent danger of physical injury to the student or others or danger to property; or
- c. Less restrictive interventions would be effective in stopping such imminent danger of physical injury or property damage.

4502.6 Following termination of any physical restraint or seclusion, the student shall be evaluated and monitored for the remainder of the school day on which physical restraint or seclusion is imposed. The evaluation shall include a routine physical/medical assessment conducted by someone not involved in the restraint or seclusion, and documentation of any injury received by the student as a result of the restraint or seclusion.

### **22 000 036.4503. Reporting the Use of Restraint and Seclusion.**

4503.1 To the School Administrator.

Any person who imposes a restraint or seclusion shall report its use to the school administrator as soon as possible, but in no event later than the end of the school day of its use.

4503.2 To Parents.

- a. The school administrator shall make a documented attempt to provide verbal or electronic notice of any incident of restraint or seclusion to the student's parents (as defined in 4500.3(13)) as soon as practical but in no event later than the end of the school day of its use; and
- b. Shall provide written notice to the parents within 24 hours of each use of restraint or seclusion that includes:
  - i. The date and time of its use;
  - ii. A description of the restraint and other intervention used;
  - iii. The date and time when the debriefing session will occur; including notice that the parents have the opportunity to participate in the debriefing; and
  - iv. The name and telephone number of the contact person who can provide further information.

4503.3 To the Superintendent.

The school administrator shall report the use of restraint or seclusion to the superintendent of the Supervisory Union whenever:

- a. There is death, injury or hospitalization to staff or student as a result of a restraint or seclusion; or
- b. An individual employee or contracted service provider has engaged in the use of physical restraint or seclusion three (3) separate times on one (1) or more students; or
- c. Physical restraint has been used for more than fifteen (15) minutes; or
- d. Any student has been restrained or secluded three (3) or more times per school year; or
- e. A student has been restrained or secluded more than once in a school day; or
- f. A student is restrained or secluded who is not on a behavioral intervention plan; or
- g. Restraint or seclusion has been used in violation of these rules, including the use of any prohibited form of restraint.

Reports to the Superintendent shall be made within three school days of the incident that requires reporting and shall include all the information set forth in Rule 4504 required of a written record of each use of restraint or seclusion.

4503.3.1 Learning environments other than public schools shall fulfill this reporting requirement by reporting to the Superintendent of the Supervisory Union that is the LEA or sending district for the student. If there is no sending district or LEA, this requirement shall be fulfilled by reporting to the Commissioner of the Department of Education in accordance with Rule 4503.4.

4503.4 To the Commissioner of the Department of Education.

The Superintendent of the supervisory union shall report the use of restraint or seclusion to the Commissioner of the Department of Education within three (3) school days of receipt of a report indicating any the following:

- a. There is death, injury requiring outside medical treatment or hospitalization to staff or student as a result of a restraint or seclusion; or
- b. Physical restraint or seclusion has been used for more than thirty (30) minutes or
- c. Physical restraint or seclusion has been used in violation of these rules, including the use of any prohibited restraint or seclusion.

The report shall include all the information set forth in Rule 4504 required of a written record of each use of restraint or seclusion.

#### **22 000 036.4504. Documentation.**

Each school shall maintain written records of each use of restraint and seclusion. The records shall be maintained by the school administrator and shall include the following:

- a. The name, age, gender and grade of the student;
- b. The date, time and duration of the restraint or seclusion;
- c. Any injuries, death or hospitalization to student or staff resulting from the use of restraint or seclusion;
- d. The location where the restraint or seclusion occurred;
- e. The precipitating event[s] leading up to the restraint or seclusion;
- f. A list of school personnel who participated in the application, monitoring and supervision of the student while restrained or secluded;
- g. The type of restraint or seclusion used;
- h. The reason for the restraint or seclusion;
- i. A description of all the interventions used prior to the application of the restraint or seclusion;
- j. Whether the student has a behavioral intervention plan and/or individualized education plan, Section 504 plan or educational support plan; and
- k. The date notification was provided to the student's parents.

#### **22 000 036.4505. Debriefing Following Use of Restraint or Seclusion.**

Following each incident of restraint or seclusion, the school administrator shall implement follow-up procedures that include:

- a. Within two (2) school days, a proper staff person reviewing the incident with the student in a manner appropriate to the student's age and developmental ability, to discuss the behavior[s] that precipitated the use of restraint or seclusion;
- b. Within two (2) school days, reviewing the incident with the staff person(s) who administered the restraint or seclusion to discuss whether proper restraint or seclusion procedures were followed, including the use of proper procedures to prevent the need for restraint or seclusion;
- c. An opportunity for parents to participate in the review of an incident of restraint or seclusion within four (4) school days:

- i. Parents shall receive prior written (including e-mail) notice of the review meeting; and
- ii. The meeting shall be convened at a mutually acceptable time and place; and
- d. Determining, in consultation with the parents, any specific follow up actions to be taken.

#### **22 000 036.4506. Annual Notification.**

Annually, at or before the beginning of the academic year, each school (defined in 4500.3(10)) shall inform all school personnel, and parents of students enrolled in the school of the policies pertaining to the use of physical restraint and seclusion and the intent to emphasize the use of positive behavioral interventions and supports and its intention to avoid the use of physical restraint or seclusion to address targeted student behavior.

#### **22 000 036.4507. Complaints and Investigations.**

##### **4507.1 Filing a Complaint**

- a. A parent (as defined in 4500.3(13)) or school personnel may file a complaint regarding the use of restraint or seclusion at any time in accordance with school district policy.
- b. The complaint shall be in writing and shall be directed to the principal, director or administrator of the school in which the student participates.
- c. If the person filing the complaint is unable to submit the complaint in writing, the recipient of the complaint shall complete the form based on a verbal complaint. In this case, the complainant shall be provided with a copy of the complaint.

##### **4507.2 Investigation**

All complaints shall be investigated by the school or district and written findings issued within thirty (30) days;

##### **4507.3 Unresolved Complaints**

Unresolved complaints shall be directed to the superintendent of the Supervisory Union where the student resides in accordance with the school board's established complaint process. A student on an individualized education plan (IEP) or Section 504 Plan may also use the dispute resolution options available under Rules 2365.1.4 - 2365.1.6, if appropriate.

#### **22 000 036.4508. Monitoring and Corrective Action.**

The commissioner of the Department of Education shall review reports received pursuant to Rule 4503.4 and identify those schools in need of additional training and, when those reports reflect an over-use of these interventions, shall direct the school to work with the department to develop a corrective action plan.

#### **22 000 036.4509. State Recommended Training.**

The Department of Education shall maintain a directory of recommended physical restraint training programs, which must include at least the following elements:

- a. Appropriate procedures for preventing the need for physical restraint, including the de-escalation of dangerous behavior, relationship-building, and the use of alternatives to physical restraint;
- b. Identification of dangerous behaviors that may indicate the need for physical restraint and methods for evaluating the risk of harm to determine if physical restraint is warranted;
- c. Simulated experience in administering and in receiving a variety of physical restraint techniques, across a range of increasingly restrictive interventions;
- d. Instruction regarding the effects of physical restraint on the person restrained, including monitoring physical signs of distress and how to obtain medical assistance;

- e. Instruction regarding investigation of injuries and complaints.

A school may use a training program that is not on the state recommended list if it submits a plan to the Secretary of Education demonstrating how that training program meets the purposes of these Rules and contains the elements listed above.

**22 000 036.4510. Effective date.**

These Rules shall become effective on August 15, 2011, however schools shall have until September 30, 2011, to have trained staff available.

## **Alternative placements**

### **LAWS**

**16 V.S.A. §1162. Suspension or expulsion of pupils.**

(c) Principals, superintendents, and school boards are authorized and encouraged to provide alternative education services or programs to students during any period of suspension or expulsion authorized under this section.

### **REGULATIONS**

**22 000 009.4312. Discipline Procedures for Children Who are Not Eligible for Special Education Services, but Who Are or May Be Qualified Individuals with Disabilities under Section 504 of The Rehabilitation Act of 1973 (29 U.S.C. § 794; 34 C.F.R. § 104 et seq.).**

(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 child'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 children who are eligible for special education when they possess weapons at school or at school functions.

**22 000 009.4313.1. 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 child 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 child 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 LEA shall 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 shall--

(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 LEA 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 child conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) shall review all relevant information in the child'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 shall 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 shall--

(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 child 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.

#### **22 000 009.4313.2. Determination of setting.**

The interim alternative educational setting referred to in Rule 4313.1(c) and (g) is determined by the IEP Team.

#### **22 000 009.4313.3. Appeal.**

(b) Authority of hearing officer.

- (1) A hearing officer in an impartial due process hearing hears, and makes a determination regarding, an appeal requested under paragraph (a) of this section.
- (2) In making the determination under paragraph (b)(1) of this section, the hearing officer may--
  - (i) Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of Rule 4313.1 or that the child's behavior was a manifestation of the child's disability; or
  - (ii) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.
- (3) The procedures under paragraphs (a) and (b)(1) and (2) of this section may be repeated, if the LEA believes the child would be dangerous if returned to the original placement.

#### **22 000 009.4313.4. Placement during appeals.**

When an appeal under Rule 4313.3 has been requested by either the parent or the LEA, the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in Rule 4313.1(c) or (g), whichever occurs first, unless the parent and the SEA or LEA agree otherwise.



**22 000 009.4313.7. Change of placement because of disciplinary removals.**

For purposes of removals of a child with a disability from the child's current educational placement under Rules 4313.1 through 4314.4, a change of placement occurs if:

- (a) The removal is for more than 10 consecutive school days; or
- (b) The child has been subjected to a series of removals that constitute a pattern--
  - (1) Because the series of removals total more than 10 school days in a school year;
  - (2) Because the child's behavior is substantially similar to the child's behavior in the incidents that resulted in the series of removals, taken cumulatively, is determined, under Rule 4313.1(f), to have been a manifestation of the child's disability; and
  - (3) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

## ***Disciplinary Approaches Addressing Specific Infractions and Conditions***

### **Firearms (as required by the Gun-Free Schools Act)**

#### **LAWS**

##### **13 V.S.A. § 4004. Possession of dangerous or deadly weapon in a school bus or school building or on school property.**

- (a) No person shall knowingly possess a firearm or a dangerous or deadly weapon while within a school building or on a school bus. A person who violates this section shall, for the first offense, be imprisoned for not more than one year or fined not more than \$1,000.00, or both, and for a second or subsequent offense shall be imprisoned for not more than three years or fined not more than \$5,000.00, or both.
- (b) No person shall knowingly possess a firearm or a dangerous or deadly weapon on any school property with the intent to injure another person. A person who violates this section shall, for the first offense, be imprisoned for not more than three years or fined not more than \$1,000.00, or both, and for a second or subsequent offense shall be imprisoned for not more than five years or fined not more than \$5,000.00, or both.
- (c) This section shall not apply to:
- (1) A law enforcement officer while engaged in law enforcement duties.
  - (2) Possession and use of firearms or dangerous or deadly weapons if the board of school directors, or the superintendent or principal if delegated authority to do so by the board, authorizes possession or use for specific occasions or for instructional or other specific purposes.
- (d) As used in this section:
- (1) "School property" means any property owned by a school, including motor vehicles.
  - (2) "Owned by the school" means owned, leased, controlled, or subcontracted by the school.
  - (3) "Dangerous or deadly weapon" shall have the same meaning as in section 4016 of this title.
  - (4) "Firearm" shall have the same meaning as in section 4016 of this title.
  - (5) "Law enforcement officer" shall have the same meaning as in section 4016 of this title.
- (e) The provisions of this section shall not limit or restrict any prosecution for any other offense, including simple assault or aggravated assault.

##### **16.V.S.A. § 1166. Possession of a firearm at school**

- (a) In this section, the terms "to school" and "firearm" shall have the same meaning that the terms have in 18 U.S.C. § 921. The school board may expand the definitions, however, provided they remain consistent with federal law.
- (b) Each school board shall adopt and implement policies regarding a student who brings a firearm to or possesses a firearm at school, which at a minimum shall include:
- (1) A provision that any student who brings a firearm to or possesses a firearm at school shall be referred to a law enforcement agency. In addition to any other action the law enforcement agency may take, it may report the incident to the Department for Children and Families.
  - (2) A provision that the superintendent or principal, with the approval of the school board following opportunity for a hearing, shall expel from the school for not less than one calendar year any student

who brings a firearm to or possesses a firearm at school; provided, however, the school board may modify the expulsion on a case-by-case basis. Modifications may be granted in circumstances such as:

- (A) The student is unaware that he or she has brought a firearm to or possessed a firearm at school.
- (B) The student did not intend to use the firearm to threaten or endanger others.
- (C) The student has a disability and the misconduct is related to the student's disability.
- (D) The student does not present an ongoing threat to others and a lengthy expulsion would not serve the best interests of the student.

(c) Annually at a time and on a form determined by the Secretary, each superintendent shall provide the Secretary with a description of the circumstances surrounding expulsions imposed under this section, the number of students expelled, and the type of firearm involved.

## **REGULATIONS**

No relevant regulations found.

## **Other weapons**

### **LAWS**

No relevant laws found.

### **REGULATIONS**

No relevant regulations found.

## **Students with chronic disciplinary issues**

### **LAWS**

No relevant laws found.

### **REGULATIONS**

No relevant regulations found.

## **Attendance and truancy**

### **LAWS**

#### **16.V.S.A. § 1126. Failure to attend; notice by teacher**

When a student between the ages of six and 16 years, who is not excused or exempted from school attendance, fails to enter school at the beginning of the academic year, or being enrolled, fails to attend the school, and when a student who is at least 16 years of age becomes enrolled in a public school and fails to attend, the teacher or principal shall notify the truant officer and either the superintendent or the school board unless the teacher or principal is satisfied that the student is absent on account of illness.

#### **16.V.S.A. § 1127. Notice and complaint by truant officer; penalty**

(a) The truant officer, upon receiving the notice provided in section 1126 of this title, shall inquire into the cause of the nonattendance of the child. If he or she finds that the child is absent without cause, the truant officer shall give written notice to the person having the control of the child that the child is absent

from school without cause, and shall also notify that person to cause the child to attend school regularly thereafter.

(b) When, after receiving notice, a person fails, without legal excuse, to cause a child to attend school as required by this chapter, he or she shall be fined not more than \$1,000.00 pursuant to subsection (c) of this section.

(c) The truant officer shall enter a complaint to the town grand juror of the town in which such person resides, or to the State's Attorney of the county, and shall provide a statement of the evidence upon which the complaint is based. The grand juror or State's Attorney shall prosecute the person. In the prosecution, the complaint, information, or indictment shall be deemed sufficient if it states that the respondent (naming the respondent) having the control of a child of school age (naming the child) neglects to send that child to a public school or an approved or recognized independent school or a home study program as required by law.

#### **16.V.S.A. § 1128. Legal pupil taken to school; nonresident child living in district**

(a) A superintendent may and the truant officer shall stop a child between the ages of six and 16 years or a child 16 years of age or over and enrolled in public school, wherever found during school hours, and shall, unless such child is excused or exempted from school attendance, take the child to the school which she or he should attend.

(b) A child of legal school age who is not exempt from school attendance and who has not finished the elementary school course, and is living in a district other than the place of legal residence shall, with the school board's approval, be admitted immediately to a school in the district where he is found. If the child is not admitted to school, then immediate action shall be taken by the truant officer to cause the return of the child to the district of his residence.

### **REGULATIONS**

No relevant regulations found.

## **Substance use**

### **LAWS**

#### **16 V.S.A. § 140. Tobacco use prohibited on public school grounds.**

No person shall be permitted to use tobacco products or tobacco substitutes as defined in 7 V.S.A. § 1001 on public school grounds or at public school sponsored functions. Public school boards may adopt policies that include confiscation and appropriate referrals to law enforcement authorities.

#### **16 V.S.A. § 1165. Alcohol and drug abuse.**

(a) The State Board, in consultation with local school boards, the alcohol and drug division, the law enforcement authorities, and the juvenile court system shall formulate a general policy for the education, discipline, and referral for rehabilitation of students who are involved with alcohol or drug abuse on school property or at school functions.

(b) The State Board shall adopt rules for all school districts that include standards consistent with due process of law for discipline, suspension, or dismissal of students and recommended procedures for education and for referral for treatment and rehabilitation.

(c) Each school district shall adopt its own policy consistent with the State Board's rules setting forth: recommended procedures for education; referral for treatment, counseling, and rehabilitation; and standards consistent with due process of law for discipline, suspension, or dismissal of students in

accordance with section 1162 of this title. Nothing in this section is intended to mandate local school districts to employ counselors for treatment or rehabilitation.

(d) [Repealed.]

(e) No municipality, school district, or officer or employee of the school district shall be liable for civil damages in connection with the implementation of the purposes of this section so long as they have acted in good faith and not knowingly in violation of the constitutional or civil rights of any person.

(f), (g) [Repealed.]

## **REGULATIONS**

### **22 000 009.4211. Definition.**

Alcohol and drug abuse (substance abuse) shall be defined as: "the ingestion of a substance in such a way that it interferes with a person's ability to perform physically, intellectually, emotionally or socially." Vermont Office of Alcohol and Drug Abuse Programs.

### **22 000 009.4212. Policy requirements.**

School districts shall adopt an alcohol and drug abuse policy which shall contain the following:

#### **4212.1. Statement of philosophy.**

This policy shall be concerned with the health and well-being of all students and the policy shall take into consideration the individual needs of students with problems as well as the right of the majority of students to an education.

#### **4212.2. Education program.**

The policy shall define an educational program consistent with the Vermont Alcohol and Drug Education Curriculum Plan.

#### **4212.3. Support and referral systems and cooperative agreements.**

The policy shall provide for a support and referral system for students in distress due to their own or another's use of alcohol or other drugs. Such a system shall include both a clearly defined in-school process for initial assessment, support, and if necessary, referral to community resources of such students, and a written referral agreement with at least one community substance abuse treatment provider approved by the Office of Alcohol and Drug Abuse Programs. Such an agreement should define the process for making an effective referral and the nature and extent of information to be provided during and after such a referral to all parties involved.

#### **4212.3A. Immediate procedures.**

The policy shall provide for the handling of any alcohol/drug-related incident until the student has been discharged to the parent, guardian, social service, medical or law enforcement agency.

#### **4212.3B. Emergency.**

The school district policy shall establish procedures for administering emergency first-aid related to alcohol and drug abuse. The procedures will define the roles of the personnel involved.

## **Bullying, harassment, or hazing**

## **LAWS**

### **16 V.S.A. §11. Classifications and definitions**

(a) As used in this title, unless the context otherwise clearly requires:

(26)

(A) "Harassment" means an incident or incidents of verbal, written, visual, or physical conduct, including any incident conducted by electronic means, based on or motivated by a student's or a student's family member's actual or perceived race, creed, color, national origin, marital status, sex, sexual orientation, gender identity, or disability that has the purpose or effect of objectively and substantially undermining and detracting from or interfering with a student's educational performance or access to school resources or creating an objectively intimidating, hostile, or offensive environment.

(B) "Harassment" includes conduct that violates subdivision (A) of this subdivision (26) and constitutes one or more of the following:

(i) Sexual harassment, which means conduct that includes unwelcome sexual advances, requests for sexual favors and other verbal, written, visual, or physical conduct of a sexual nature when one or both of the following occur:

(I) Submission to that conduct is made either explicitly or implicitly a term or condition of a student's education.

(II) Submission to or rejection of such conduct by a student is used as a component of the basis for decisions affecting that student.

(ii) Racial harassment, which means conduct directed at the characteristics of a student's or a student's family member's actual or perceived race or color, and includes the use of epithets, stereotypes, racial slurs, comments, insults, derogatory remarks, gestures, threats, graffiti, display, or circulation of written or visual material, and taunts on manner of speech and negative references to racial customs.

(iii) Harassment of members of other protected categories, which means conduct directed at the characteristics of a student's or a student's family member's actual or perceived creed, national origin, marital status, sex, sexual orientation, gender identity, or disability and includes the use of epithets, stereotypes, slurs, comments, insults, derogatory remarks, gestures, threats, graffiti, display, or circulation of written or visual material, taunts on manner of speech, and negative references to customs related to any of these protected categories.

(30)

(A) "Hazing" means any act committed by a person, whether individually or in concert with others, against a student in connection with pledging, being initiated into, affiliating with, holding office in, or maintaining membership in any organization that is affiliated with an educational institution; and that is intended to have the effect of, or should reasonably be expected to have the effect of, humiliating, intimidating, or demeaning the student or endangering the mental or physical health of a student. Hazing also includes soliciting, directing, aiding, or otherwise participating actively or passively in the above acts. Hazing may occur on or off the campus of an educational institution. Hazing shall not include any activity or conduct that furthers legitimate curricular, extracurricular, or military training program goals, provided that:

(i) The goals are approved by the educational institution; and

(ii) The activity or conduct furthers the goals in a manner that is appropriate, contemplated by the educational institution, and normal and customary for similar programs at other educational institutions.

(B) The definitions of "educational institution," "organization," "pledging," and "student" shall be the same as those in section 570i of this title.

(32) "Bullying" means any overt act or combination of acts, including an act conducted by electronic means, directed against a student by another student or group of students and that:

- (A) Is repeated over time;
- (B) Is intended to ridicule, humiliate, or intimidate the student; and
- (C)
  - (i) Occurs during the school day on school property, on a school bus, or at a school-sponsored activity, or before or after the school day on a school bus or at a school-sponsored activity; or
  - (ii) Does not occur during the school day on school property, on a school bus, or at a school-sponsored activity and can be shown to pose a clear and substantial interference with another student's right to access educational programs.

**16 V.S.A. §§ 570. Harassment, hazing, and bullying prevention policies**

(a) State policy. It is the policy of the state of Vermont that all Vermont educational institutions provide safe, orderly, civil, and positive learning environments. Harassment, hazing, and bullying have no place and will not be tolerated in Vermont schools. No Vermont student should feel threatened or be discriminated against while enrolled in a Vermont school.

(b) Prevention policies. Each school board shall develop, adopt, ensure the enforcement of and make available in the manner described under subdivision 563(1) of this title harassment, hazing, and bullying prevention policies that shall be at least as stringent as model policies developed by the commissioner. Any school board that fails to adopt one or more of these policies shall be presumed to have adopted the most current model policy or policies published by the commissioner.

(c) Notice. Annually, prior to the commencement of curricular and cocurricular activities, the school board shall provide notice of the policy and procedures developed under this subchapter to students, custodial parents or guardians of students, and staff members, including reference to the consequences of misbehavior contained in the plan required by section 1161a of this title. Notice to students shall be in age-appropriate language and should include examples of harassment, hazing, and bullying. At a minimum, this notice shall appear in any publication that sets forth the comprehensive rules, procedures, and standards of conduct for the school. The school board shall use its discretion in developing and initiating age-appropriate programs to inform students about the substance of the policy and procedures in order to help prevent harassment, hazing, and bullying. School boards are encouraged to foster opportunities for conversations between and among students regarding tolerance and respect.

(d) Duties of the commissioner. The commissioner shall:

- (1) Develop and, from time to time, update model harassment, hazing, and bullying prevention policies; and
- (2) Establish an advisory council to review and coordinate school and statewide activities relating to the prevention of and response to harassment, hazing, and bullying. The council shall report annually in January to the state board and the house and senate committees on education. The council shall include:
  - (A) The executive director of the Vermont Principals' Association or designee;
  - (B) The executive director of the Vermont School Boards Association or designee;
  - (C) The executive director of the Vermont Superintendents Association or designee;
  - (D) The president of the Vermont-National Education Association or designee;
  - (E) The executive director of the Vermont Human Rights Commission or designee;
  - (F) The executive director of the Vermont Independent Schools Association or designee; and
  - (G) Other members selected by the commissioner, at least one of whom shall be a current secondary student who has witnessed or experienced harassment, hazing, or bullying in the school environment.

(e) Definitions. In this subchapter:

- (1) "Educational institution" and "school" mean a public school or an approved or recognized independent school as defined in section 11 of this title.
- (2) "Organization," "pledging," and "student" have the same meanings as in subdivisions 140a(2), (3), and (4) of this title.
- (3) "Harassment," "hazing," and "bullying" have the same meanings as in subdivisions 11(a)(26), (30), and (32) of this title.
- (4) "School board" means the board of directors or other governing body of an educational institution when referring to an independent school.

#### **16 V.S.A. § 570a. Harassment**

(a) Policies and plan. The harassment prevention policy required by section 570 of this title and its plan for implementation shall include:

- (1) A statement that harassment, as defined in subdivision 11(a)(26) of this title, is prohibited and may constitute a violation of the public accommodations act as more fully described in article 2 of this subchapter 5.
- (2) Consequences and appropriate remedial action for staff or students who commit harassment. At all stages of the investigation and determination process, school officials are encouraged to make available to complainants alternative dispute resolution methods, such as mediation, for resolving complaints.
- (3) A procedure that directs students, staff, parents, and guardians how to report violations and file complaints.
- (4) A description of the circumstances under which harassment may be reported to a law enforcement agency.
- (5) A procedure for investigating reports of violations and complaints. The procedure shall provide that, unless special circumstances are present and documented by the school officials, an investigation is initiated no later than one school day from the filing of a complaint and the investigation and determination by school officials are concluded no later than five school days from the filing of the complaint with a person designated to receive complaints under subdivision (7) of this subsection. All internal reviews of the school's initial determination, including the issuance of a final decision, shall, unless special circumstances are present and documented by the school officials, be completed within 30 days after the review is requested.
- (6) A description of how the school board will ensure that teachers and other staff members receive training in preventing, recognizing, and responding to harassment.
- (7) Annual designation of two or more people at each school campus to receive complaints and a procedure for publicizing those people's availability.
- (8) A procedure for publicizing the availability of the Vermont Human Rights Commission and the federal Department of Education's Office of Civil Rights and other appropriate State and federal agencies to receive complaints of harassment.
- (9) A statement that acts of retaliation for the reporting of harassment or for cooperating in an investigation of harassment are unlawful pursuant to 9 V.S.A. § 4503.

(b) Independent review.

- (1) A student who desires independent review under this subsection because the student is either dissatisfied with the final determination of the school officials as to whether harassment occurred or believes that, although a final determination was made that harassment occurred, the school's response was inadequate to correct the problem shall make such request in writing to the headmaster



or superintendent of schools. Upon such request, the headmaster or superintendent shall initiate an independent review by a neutral person selected from a list developed jointly by the Secretary of Education and the Human Rights Commission and maintained by the Secretary. Individuals shall be placed on the list on the basis of their objectivity, knowledge of harassment issues, and relevant experience.

(2) The independent review shall proceed expeditiously and shall consist of an interview of the student and the relevant school officials and review of written materials involving the complaint maintained by the school or others.

(3) Upon the conclusion of the review, the reviewer shall advise the student and the school officials as to the sufficiency of the school's investigation, its determination, the steps taken by the school to correct any harassment found to have occurred, and any future steps the school should take. The reviewer shall advise the student of other remedies that may be available if the student remains dissatisfied and, if appropriate, may recommend mediation or other alternative dispute resolution.

(4) The independent reviewer shall be considered an agent of the school for the purpose of being able to review confidential student records.

(5) The costs of the independent review shall be borne by the public school district or independent school.

(6) Nothing in this subsection shall prohibit the school board from requesting an independent review at any stage of the process.

(7) Evidence of conduct or statements made in connection with an independent review shall not be admissible in any court proceeding. This subdivision shall not require exclusion of any evidence otherwise obtainable from independent sources merely because it is presented in the course of an independent review.

(8) The Secretary may adopt rules implementing this subsection.

#### **16 V.S.A. § 570b. Hazing**

The hazing prevention policy required by section 570 of this title and its plan for implementation shall include:

(1) A statement that hazing, as defined in subdivision 11(a)(30) of this title, is prohibited and may be subject to civil penalties pursuant to article 3 of this subchapter 5;

(2) A procedure that directs students, staff, parents, and guardians how to report violations and file complaints;

(3) A procedure for investigating reports of violations and complaints;

(4) A description of the circumstances under which hazing may be reported to a law enforcement agency;

(5) Appropriate penalties or sanctions or both for organizations that or individuals who engage in hazing and revocation or suspension of an organization's permission to operate or exist within the institution's purview if that organization knowingly permits, authorizes, or condones hazing;

(6) A description of how the school board will ensure that teachers and other staff members receive training in preventing, recognizing, and responding to hazing; and

(7) Annual designation of two or more people at each school campus to receive complaints and a procedure for publicizing those people's availability.

### **16 V.S.A. § 570c. Bullying**

The bullying prevention policy required by section 570 of this title and its plan for implementation shall include:

- (1) A statement that bullying, as defined in subdivision 11(a)(32) of this title, is prohibited.
- (2) A procedure that directs students, staff, parents, and guardians how to report violations and file complaints.
- (3) A procedure for investigating reports of violations and complaints.
- (4) A description of the circumstances under which bullying may be reported to a law enforcement agency.
- (5) Consequences and appropriate remedial action for students who commit bullying.
- (6) A description of how the school board will ensure that teachers and other staff members receive training in preventing, recognizing, and responding to bullying.
- (7) Annual designation of two or more people at each school campus to receive complaints and a procedure both for publicizing the availability of those people and clarifying that their designation does not preclude a student from bringing a complaint to any adult in the building.

### **16.V.S.A. § 570f. Harassment; notice and response.**

(a)(1) An educational institution that receives actual notice of alleged conduct that may constitute harassment shall promptly investigate to determine whether harassment occurred. After receiving notice of the alleged conduct, the school shall provide a copy of its harassment policy, including its harassment investigation procedure, to the alleged victim and the alleged perpetrator. If either the alleged victim or the alleged perpetrator is a minor, the copy of the policy shall be provided to the person's parent or guardian. Nothing in this section shall be construed to prohibit educational institutions from investigating and imposing disciplinary consequences upon students for misconduct. Elementary and secondary school officials shall strive to implement the plan developed in accordance with subdivision 1161a(a)(6) of this title in order to prevent misconduct from escalating to the level of harassment.

- (2) If, after notice, the educational institution finds that the alleged conduct occurred and that it constitutes harassment, the educational institution shall take prompt and appropriate remedial action reasonably calculated to stop the harassment.

(b) A claim may be brought under the Fair Housing and Public Accommodations Act pursuant to 9 V.S.A. chapter 139 only after the administrative remedies available to the claimant under the policy adopted by the educational institution pursuant to subsection 166(e) or section 570 of this title or pursuant to the harassment policy of a postsecondary school have been exhausted. Such a showing shall not be necessary where the claimant demonstrates that:

- (1) The educational institution does not maintain such a policy;
- (2) A determination has not been rendered within the time limits established under section 570a of this title;
- (3) The health or safety of the complainant would be jeopardized otherwise;
- (4) Exhaustion would be futile; or
- (5) Requiring exhaustion would subject the student to substantial and imminent retaliation.

(c) To prevail in an action alleging unlawful harassment filed pursuant to this section and 9 V.S.A. chapter 139, the plaintiff shall prove both of the following:

- (1) The student was subjected to unwelcome conduct based on the student's or the student's family member's actual or perceived membership in a category protected by law by 9 V.S.A. § 4502.
- (2) The conduct was either:

(A) For multiple instances of conduct, so pervasive that when viewed from an objective standard of a similarly situated reasonable person, it substantially and adversely affected the targeted student's equal access to educational opportunities or benefits provided by the educational institution; or

(B) For a single instance of conduct, so severe that when viewed from an objective standard of a similarly situated reasonable person, it substantially and adversely affected the targeted student's equal access to educational opportunities or benefits provided by the educational institution.

(d) As used in this article:

(1) "Designated employee" means an employee who has been designated by an educational institution to receive complaints of harassment pursuant to section 570a of this title or in accordance with the harassment policy of a postsecondary school.

(2) "Educational institution" means a Vermont public or independent school or a postsecondary school that offers or operates a program of college or professional education for credit or degree in Vermont.

(3) "Notice" means a written complaint or oral information that harassment may have occurred which has been provided to a designated employee from another employee, the student allegedly subjected to the harassment, another student, a parent or guardian, or any other individual who has reasonable cause to believe the alleged conduct may have occurred. If the complaint is oral, the designated employee shall promptly reduce the complaint to writing, including the time, place, and nature of the conduct, and the identity of the participants and complainant.

#### **16.V.S.A. § 570i. Definitions.**

As used in this subchapter:

(1) "Educational institution" means a Vermont public or independent school, or a postsecondary school which offers or operates a program of college or professional education for credit or a degree in Vermont.

(2) "Organization" means a fraternity, sorority, athletic team, association, corporation, order, society, corps, cooperative, club, or other similar group, whose members primarily are students at an educational institution, and which is affiliated with the educational institution.

(3) "Pledging" means any action or activity related to becoming a member of an organization.

(4) "Student" means any person who:

(A) Is registered in or in attendance at an educational institution;

(B) Has been accepted for admission at the educational institution where the hazing incident occurs;  
or

(C) Intends to attend an educational institution during any of its regular sessions after an official academic break.

#### **16.V.S.A. § 570j. Unlawful conduct.**

(a) For purposes of this subchapter, "hazing" means any intentional, knowing, or reckless act committed by a student, whether individually or in concert with others, against another student:

(1) In connection with pledging, being initiated into, affiliating with, holding office in, or maintaining membership in any organization which is affiliated with the educational institution; and

(2) Which is intended to have the effect of, or should reasonably be expected to have the effect of, endangering the mental or physical health of the student.

(b) Hazing shall not include any activity or conduct that furthers legitimate curricular, extracurricular, or military training program goals, provided that:

(1) The goals are approved by the educational institution; and

(2) The activity or conduct furthers the goals in a manner that is appropriate, contemplated by the educational institution, and normal and customary for similar programs at other educational institutions.

(c) It shall be unlawful to:

- (1) Engage in hazing;
- (2) Solicit, direct, aid, or attempt to aid, or abet another person engaged in hazing; or
- (3) Knowingly fail to take reasonable measures within the scope of the person's authority to prevent hazing.

(d) It is not a defense in an action under this subchapter that the person against whom the hazing was directed consented to or acquiesced in the hazing activity.

**16.V.S.A. § 570k. Civil penalty; Judicial Bureau; waiver penalty.**

(a) A person who commits an unlawful act under this subchapter shall be subject to a civil penalty of not more than \$5,000.00.

(b) Any law enforcement officer may issue a summons and complaint for an act of hazing, which shall be heard by the Judicial Bureau pursuant to the procedures provided in 4 V.S.A. chapter 29.

(c) The Court Administrator shall appoint a panel of Judicial Bureau hearing officers to establish a waiver penalty for an act of hazing.

(d) Nothing in this section shall limit or affect the right of an educational institution to enforce its own penalties against hazing.

**16.V.S.A. § 570l. Criminal prosecution and civil action.**

Nothing in this subchapter shall limit or preclude a criminal prosecution or any criminal or civil action based on any act that may constitute hazing.

**REGULATIONS**

No relevant regulations found.

**Other special infractions or conditions**

**LAWS**

No relevant laws found.

**REGULATIONS**

No relevant regulations found.

## ***Prevention and Behavioral Interventions (Non-Punitive)***

### **Prevention**

#### **LAWS**

##### **16 V.S.A. § 165. Standards of quality for public schools; equal educational opportunities.**

(a) In order to carry out Vermont's policy that all Vermont children will be afforded educational opportunities that are substantially equal in quality, each Vermont public school, including each career technical center, shall meet the following education quality standards:

(1) The school, through a process including parents, teachers, students, and community members, develops, implements, and annually updates a continuous improvement plan to improve student performance within the school. The plan shall include goals and objectives for improved student learning and educational strategies and activities to achieve its goals. The plan shall also address the effectiveness of efforts made since the previous continuous improvement plan to ensure the school maintains a safe, orderly, civil, and positive learning environment that is free from harassment, hazing, and bullying. The school shall assess student performance under the plan using a method or methods of assessment developed under subdivision 164(9) of this title.

(8) The school maintains a safe, orderly, civil, and positive learning environment that is free from hazing, harassment, and bullying, and is based on sound instructional and classroom management practices and clear discipline policies that are consistently and effectively enforced.

##### **16 V.S.A. § 570. Harassment, hazing, and bullying prevention policies**

(b) Prevention policies. Each school board shall develop, adopt, ensure the enforcement of and make available in the manner described under subdivision 563(1) of this title harassment, hazing, and bullying prevention policies that shall be at least as stringent as model policies developed by the commissioner. Any school board that fails to adopt one or more of these policies shall be presumed to have adopted the most current model policy or policies published by the commissioner.

(d) Duties of the commissioner. The commissioner shall:

- (1) Develop and, from time to time, update model harassment, hazing, and bullying prevention policies; and
- (2) Establish an advisory council to review and coordinate school and statewide activities relating to the prevention of and response to harassment, hazing, and bullying. [...]

##### **16 V.S.A. § 909. Tobacco use, alcohol and drug abuse prevention education curriculum.**

(a) The Secretary, in conjunction with the Alcohol and Drug Abuse Council, and where appropriate, with the Division of Health Promotion, shall develop a sequential alcohol and drug abuse prevention education curriculum for elementary and secondary schools. The curriculum shall include teaching about the effects and legal consequences of the possession and use of tobacco products.

(b) The Secretary shall:

- (1) Provide for pre-service and in-service training programs for school personnel on alcohol and drug abuse prevention and on the effects and legal consequences of the possession and use of tobacco products. At least one training program shall be made available in electronic format. Each superintendent shall determine the content, duration, and frequency of training on issues concerning alcohol and drug abuse for the districts in his or her supervisory union.
- (2) Provide teaching materials that are appropriate to the age and learning ability of the students.

- (3) Provide technical assistance to the local school districts for implementation of the curriculum.
- (4) Encourage coordination of effort with existing community resources.

## **REGULATIONS**

### **22 000 009.4212. Policy requirements.**

School districts shall adopt an alcohol and drug abuse policy which shall contain the following:

#### **4212.2. Education program.**

The policy shall define an educational program consistent with the Vermont Alcohol and Drug Education Curriculum Plan.

## **Behavioral interventions and student support services**

## **LAWS**

### **16 V.S.A. §1161a. Discipline.**

(a) Each public and each approved independent school shall adopt and implement a comprehensive plan for responding to student misbehavior. To the extent appropriate, the plan shall promote the positive development of youth. The plan shall include:

- (1) The school's approach to classroom management and response to disruptive behavior, including the use of alternative educational settings.
- (2) The manner in which the school will provide information and training to students in methods of conflict resolution, peer mediation, and anger management.
- (3) Procedures for informing parents of the school's discipline policies, for notifying parents of student misconduct, and for working with parents to improve student behavior.
- (4) The school's response to significant disruptions, such as threats or use of bombs or weapons.
- (5) A description of how the school will ensure that all staff and contractors who routinely have unsupervised contact with students periodically receive training on the maintenance of a safe, orderly, civil, and positive learning environment. The training shall be appropriate to the role of the staff member being trained and shall teach classroom and behavior management, enforcement of the school's discipline policies, and positive youth development models.
- (6) A description of behaviors on and off school grounds that constitute misconduct, including harassment, bullying, and hazing, particularly those behaviors that may be grounds for expulsion. The plan shall include a description of misconduct as listed in subdivisions 11(a)(26)(A)-(C) and (32) of this title that, although serious, does not rise to the level of harassment or bullying as those terms are defined therein.
- (7) Standard due process procedures for suspension and expulsion of a student.

### **16 V.S.A. § 1165. Alcohol and drug abuse.**

(a) The State Board, in consultation with local school boards, the alcohol and drug division, the law enforcement authorities, and the juvenile court system shall formulate a general policy for the education, discipline, and referral for rehabilitation of students who are involved with alcohol or drug abuse on school property or at school functions.

(b) The State Board shall adopt rules for all school districts that include standards consistent with due process of law for discipline, suspension, or dismissal of students and recommended procedures for education and for referral for treatment and rehabilitation.

(c) Each school district shall adopt its own policy consistent with the State Board's rules setting forth: recommended procedures for education; referral for treatment, counseling, and rehabilitation; and standards consistent with due process of law for discipline, suspension, or dismissal of students in accordance with section 1162 of this title. Nothing in this section is intended to mandate local school districts to employ counselors for treatment or rehabilitation.

#### **16 V.S.A. § 570a. Harassment**

(a) Policies and plan. The harassment prevention policy required by section 570 of this title and its plan for implementation shall include:

(2) Consequences and appropriate remedial action for staff or students who commit harassment. At all stages of the investigation and determination process, school officials are encouraged to make available to complainants alternative dispute resolution methods, such as mediation, for resolving complaints.

### **REGULATIONS**

#### **22 000 003.2121.5. Tiered system of support.**

In accordance with 16 V.S.A. §2902 and State Board Rule 2194, each school shall ensure that a tiered system of academic and behavioral supports is in place to assist all students in working toward attainment of the standards. This system shall be aligned with the school's Personalized Learning Plan structures, and specific student support services shall be specified within a student's Personalized Learning Plan.

School counseling services shall support the mission and vision of the school and shall be available to all students K-12. The services shall address students' academic, career, personal and social development. Such services shall be aligned and integrated with the work of other professionals in the school setting, as well as those in other educational and human services.

Staffing shall be filled by licensed school counselors and other student support personnel with sufficient staff to carry out the school counseling services, such as guidance counselors, Student Assistance Program counselors, home-school coordinators, English-as-a-Second-Language coordinators and school-based clinicians. At the elementary level, there shall be no more than 300 students per school counselor and other student support personnel. Schools with fewer than 300 students shall employ a school counselor and other student support personnel on a pro-rata basis. At the secondary level, there shall be no more than 200 students per school counselor and other student support personnel.

Health services, including health appraisal and counseling, communicable disease control, mental health, and emergency and first aid care, shall be made available in a confidential manner to students in each school. These health services shall be delivered in accordance with the school district's written policies and procedures, which shall be developed in collaboration with parents and community health resources.

The Vermont Department of Health recommends that schools and supervisory unions implement the School Nurse Leader School Health Services Delivery Model, which is consistent with the principles of the national Coordinated School Health Model, to ensure appropriate access and coverage across their district or supervisory union.

Each school shall engage the services of a person licensed as a School Nurse or Associate School Nurse. There shall be no more than 500 students per school nurse. Schools with fewer than 500 students shall employ a nurse on a pro-rata basis.

The school shall comply with requirements of state law relative to vision and hearing screening, immunization, and child abuse reporting, and federal law relating to invasive physical examinations in accordance with the Protection of Pupil Rights Act (20 U.S.C. §1232h).

#### **22 000 009.4212. Policy requirements.**

School districts shall adopt an alcohol and drug abuse policy which shall contain the following:

##### **4212.3. Support and referral systems and cooperative agreements.**

The policy shall provide for a support and referral system for students in distress due to their own or another's use of alcohol or other drugs. Such a system shall include both a clearly defined in-school process for initial assessment, support, and if necessary, referral to community resources of such students, and a written referral agreement with at least one community substance abuse treatment provider approved by the Office of Alcohol and Drug Abuse Programs. Such an agreement should define the process for making an effective referral and the nature and extent of information to be provided during and after such a referral to all parties involved.

#### **22 000 009.4313.1. 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 child conduct.

(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 shall--

(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.

#### **22 000 036.4500. Use of restraint and seclusion in schools.**

##### **4500.3. Definitions.**

For purposes of these rules, the following definitions apply:

1. Behavioral Intervention Plan means a plan that details strategies to address behaviors that impede learning, or are ongoing, and do not readily respond to general intervention or classroom management techniques, by teaching pro-social skills and other positive replacement behaviors. The plan may include positive strategies, program or curricular modifications, and supplementary aids and supports required to address problem behaviors.

3. Functional Behavioral Assessment means the analysis of a student's behavior patterns before, during, and after rule-breaking or other inappropriate behavior for the purpose of guiding the development of a behavioral intervention plan.

8. Positive Behavioral Interventions and Supports means an approach to preventing and responding to targeted behavior that:

- a. Is based on evidence-based practices;
- b. Is proactive and instructional, rather than reactive;
- c. Can operate on individual, group, classroom, or school wide levels;
- d. Includes a system of continual data collection; and



- e. Relies on data-driven decisions.

## **Professional development**

### **LAWS**

#### **16 V.S.A. § 570a. Harassment**

(a) Policies and plan. The harassment prevention policy required by section 570 of this title and its plan for implementation shall include:

- (6) A description of how the school board will ensure that teachers and other staff members receive training in preventing, recognizing, and responding to harassment.

#### **16 V.S.A. § 570b. Hazing**

The hazing prevention policy required by section 570 of this title and its plan for implementation shall include:

- (6) a description of how the school board will ensure that teachers and other staff members receive training in preventing, recognizing, and responding to hazing; and

#### **16 V.S.A. § 570c. Bullying**

The bullying prevention policy required by section 570 of this title and its plan for implementation shall include:

- (6) A description of how the school board will ensure that teachers and other staff members receive training in preventing, recognizing, and responding to bullying.

#### **16 V.S.A. § 909. Tobacco use, alcohol and drug abuse prevention education curriculum**

(b) The Secretary shall:

- (1) Provide for pre-service and in-service training programs for school personnel on alcohol and drug abuse prevention and on the effects and legal consequences of the possession and use of tobacco products. At least one training program shall be made available in electronic format. Each superintendent shall determine the content, duration, and frequency of training on issues concerning alcohol and drug abuse for the districts in his or her supervisory union.
- (2) Provide teaching materials that are appropriate to the age and learning ability of the students.
- (3) Provide technical assistance to the local school districts for implementation of the curriculum.
- (4) Encourage coordination of effort with existing community resources.

#### **16 V.S.A. §1161a. Discipline.**

(a) Each public and each approved independent school shall adopt and implement a comprehensive plan for responding to student misbehavior. To the extent appropriate, the plan shall promote the positive development of youth. The plan shall include:

- (5) A description of how the school will ensure that all staff and contractors who routinely have unsupervised contact with students periodically receive training on the maintenance of a safe, orderly, civil, and positive learning environment. The training shall be appropriate to the role of the staff member being trained and shall teach classroom and behavior management, enforcement of the school's discipline policies, and positive youth development models.

## REGULATIONS

### **22 000 036.4509. State Recommended Training.**

The Department of Education shall maintain a directory of recommended physical restraint training programs, which must include at least the following elements:

- a. Appropriate procedures for preventing the need for physical restraint, including the de-escalation of dangerous behavior, relationship-building, and the use of alternatives to physical restraint;
- b. Identification of dangerous behaviors that may indicate the need for physical restraint and methods for evaluating the risk of harm to determine if physical restraint is warranted;
- c. Simulated experience in administering and in receiving a variety of physical restraint techniques, across a range of increasingly restrictive interventions;
- d. Instruction regarding the effects of physical restraint on the person restrained, including monitoring physical signs of distress and how to obtain medical assistance;
- e. Instruction regarding investigation of injuries and complaints.

A school may use a training program that is not on the state recommended list if it submits a plan to the Secretary of Education demonstrating how that training program meets the purposes of these Rules and contains the elements listed above.

## ***Monitoring and Accountability***

### **Formal incident reporting of conduct violations**

#### **LAWS**

##### **16.V.S.A. § 1166. Possession of a firearm at school**

(c) Annually at a time and on a form determined by the Secretary, each superintendent shall provide the Secretary with a description of the circumstances surrounding expulsions imposed under this section, the number of students expelled, and the type of firearm involved.

#### **REGULATIONS**

##### **22 000 036.4503. Reporting the use of restraint and seclusion.**

4503.1 To the School Administrator.

Any person who imposes a restraint or seclusion shall report its use to the school administrator as soon as possible, but in no event later than the end of the school day of its use.

4503.3 To the Superintendent.

The school administrator shall report the use of restraint or seclusion to the superintendent of the Supervisory Union whenever:

- a. There is death, injury or hospitalization to staff or student as a result of a restraint or seclusion; or
- b. An individual employee or contracted service provider has engaged in the use of physical restraint or seclusion three (3) separate times on one (1) or more students; or
- c. Physical restraint has been used for more than fifteen (15) minutes; or
- d. Any student has been restrained or secluded three (3) or more times per school year; or
- e. A student has been restrained or secluded more than once in a school day; or
- f. A student is restrained or secluded who is not on a behavioral intervention plan; or
- g. Restraint or seclusion has been used in violation of these rules, including the use of any prohibited form of restraint.

Reports to the Superintendent shall be made within three school days of the incident that requires reporting and shall include all the information set forth in Rule 4504 required of a written record of each use of restraint or seclusion.

4503.3.1 Learning environments other than public schools shall fulfill this reporting requirement by reporting to the Superintendent of the Supervisory Union that is the LEA or sending district for the student. If there is no sending district or LEA, this requirement shall be fulfilled by reporting to the Commissioner of the Department of Education in accordance with Rule 4503.4.

4503.4 To the Commissioner of the Department of Education.

The Superintendent of the supervisory union shall report the use of restraint or seclusion to the Commissioner of the Department of Education within three (3) school days of receipt of a report indicating any the following:

- a. There is death, injury requiring outside medical treatment or hospitalization to staff or student as a result of a restraint or seclusion; or
- b. Physical restraint or seclusion has been used for more than thirty (30) minutes or

- c. Physical restraint or seclusion has been used in violation of these rules, including the use of any prohibited restraint or seclusion.

The report shall include all the information set forth in Rule 4504 required of a written record of each use of restraint or seclusion.

#### **22 000 036.4504. Documentation.**

Each school shall maintain written records of each use of restraint and seclusion. The records shall be maintained by the school administrator and shall include the following:

- a. The name, age, gender and grade of the student;
- b. The date, time and duration of the restraint or seclusion;
- c. Any injuries, death or hospitalization to student or staff resulting from the use of restraint or seclusion;
- d. The location where the restraint or seclusion occurred;
- e. The precipitating event[s] leading up to the restraint or seclusion;
- f. A list of school personnel who participated in the application, monitoring and supervision of the student while restrained or secluded;
- g. The type of restraint or seclusion used;
- h. The reason for the restraint or seclusion;
- i. A description of all the interventions used prior to the application of the restraint or seclusion;
- j. Whether the student has a behavioral intervention plan and/or individualized education plan, Section 504 plan or educational support plan; and
- k. The date notification was provided to the student's parents.

#### **22 000 036.4507. Complaints and Investigations.**

##### **4507.1 Filing a Complaint**

- a. A parent (as defined in 4500.3(13)) or school personnel may file a complaint regarding the use of restraint or seclusion at any time in accordance with school district policy.
- b. The complaint shall be in writing and shall be directed to the principal, director or administrator of the school in which the student participates.
- c. If the person filing the complaint is unable to submit the complaint in writing, the recipient of the complaint shall complete the form based on a verbal complaint. In this case, the complainant shall be provided with a copy of the complaint.

##### **4507.2 Investigation**

All complaints shall be investigated by the school or district and written findings issued within thirty (30) days;

##### **4507.3 Unresolved Complaints**

Unresolved complaints shall be directed to the superintendent of the Supervisory Union where the student resides in accordance with the school board's established complaint process. A student on an individualized education plan (IEP) or Section 504 Plan may also use the dispute resolution options available under Rules 2365.1.4 - 2365.1.6, if appropriate.

## Parental notification

### LAWS

#### **16.V.S.A. §1127. Notice and complaint by truant officer; penalty**

(a) The truant officer, upon receiving the notice provided in section 1126 of this title, shall inquire into the cause of the nonattendance of the child. If he or she finds that the child is absent without cause, the truant officer shall give written notice to the person having the control of the child that the child is absent from school without cause, and shall also notify that person to cause the child to attend school regularly thereafter.

#### **16 V.S.A. §1161a. Discipline.**

(a) Each public and each approved independent school shall adopt and implement a comprehensive plan for responding to student misbehavior. To the extent appropriate, the plan shall promote the positive development of youth. The plan shall include:

(3) Procedures for informing parents of the school's discipline policies, for notifying parents of student misconduct, and for working with parents to improve student behavior.

### REGULATIONS

#### **22 000 036.4503. Reporting the use of restraint and seclusion.**

##### 4503.2 To Parents.

- a. The school administrator shall make a documented attempt to provide verbal or electronic notice of any incident of restraint or seclusion to the student's parents (as defined in 4500.3(13)) as soon as practical but in no event later than the end of the school day of its use; and
- b. Shall provide written notice to the parents within 24 hours of each use of restraint or seclusion that includes:
  - i. The date and time of its use;
  - ii. A description of the restraint and other intervention used;
  - iii. The date and time when the debriefing session will occur; including notice that the parents have the opportunity to participate in the debriefing; and
  - iv. The name and telephone number of the contact person who can provide further information.

#### **22 000 036.4505. Debriefing following Use of restraint or seclusion.**

- c. An opportunity for parents to participate in the review of an incident of restraint or seclusion within four (4) school days:
  - i. Parents shall receive prior written (including e-mail) notice of the review meeting; and
  - ii. The meeting shall be convened at a mutually acceptable time and place; and

#### **22 000 009.4311. Procedures.**

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

4311.1 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 the last 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;
- (4) Decision in writing to the parent/guardian.

4311.2 In cases of a long term suspension which is generally more than 10 days unless a school district establishes a shorter period, 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;
- (4) Decision in writing to parent/guardian.

**22 000 009.4313.1. 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 child conduct.

(h) Notification. Not later than the date on which the decision to take disciplinary action is made, the LEA shall notify the parents of that decision, and provide the parents a copy of their Parents' Rights in Special Education.

## **Reporting and referrals between schools and law enforcement**

### **LAWS**

**13 V.S.A. § 4004. Possession of dangerous or deadly weapon in a school bus or school building or on school property.**

(a) No person shall knowingly possess a firearm or a dangerous or deadly weapon while within a school building or on a school bus. A person who violates this section shall, for the first offense, be imprisoned for not more than one year or fined not more than \$1,000.00, or both, and for a second or subsequent offense shall be imprisoned for not more than three years or fined not more than \$5,000.00, or both.

(b) No person shall knowingly possess a firearm or a dangerous or deadly weapon on any school property with the intent to injure another person. A person who violates this section shall, for the first offense, be imprisoned for not more than three years or fined not more than \$1,000.00, or both, and for a second or subsequent offense shall be imprisoned for not more than five years or fined not more than \$5,000.00, or both.

(c) This section shall not apply to:

- (1) A law enforcement officer while engaged in law enforcement duties.
- (2) Possession and use of firearms or dangerous or deadly weapons if the board of school directors, or the superintendent or principal if delegated authority to do so by the board, authorizes possession or use for specific occasions or for instructional or other specific purposes.

(d) As used in this section:

- (1) "School property" means any property owned by a school, including motor vehicles.
- (2) "Owned by the school" means owned, leased, controlled, or subcontracted by the school.
- (3) "Dangerous or deadly weapon" shall have the same meaning as in section 4016 of this title.
- (4) "Firearm" shall have the same meaning as in section 4016 of this title.
- (5) "Law enforcement officer" shall have the same meaning as in section 4016 of this title.

(e) The provisions of this section shall not limit or restrict any prosecution for any other offense, including simple assault or aggravated assault.

**16 V.S.A. § 140. Tobacco use prohibited on public school grounds.**

No person shall be permitted to use tobacco products or tobacco substitutes as defined in 7 V.S.A. § 1001 on public school grounds or at public school sponsored functions. Public school boards may adopt policies that include confiscation and appropriate referrals to law enforcement authorities.

**16 V.S.A. § 570a. Harassment.**

(a) Policies and plan. The harassment prevention policy required by section 570 of this title and its plan for implementation shall include:

- (4) A description of the circumstances under which harassment may be reported to a law enforcement agency.

**16 V.S.A. § 570b. Hazing.**

The hazing prevention policy required by section 570 of this title and its plan for implementation shall include:

- (4) A description of the circumstances under which hazing may be reported to a law enforcement agency;

**16 V.S.A. § 570c. Bullying.**

The bullying prevention policy required by section 570 of this title and its plan for implementation shall include:

- (4) A description of the circumstances under which bullying may be reported to a law enforcement agency.

**16.V.S.A. § 1166. Possession of a firearm at school.**

(b) Each school board shall adopt and implement policies regarding a student who brings a firearm to or possesses a firearm at school, which at a minimum shall include:

- (1) A provision that any student who brings a firearm to or possesses a firearm at school shall be referred to a law enforcement agency. In addition to any other action the law enforcement agency may take, it may report the incident to the Department for Children and Families.

**33 V.S.A. § 5225. Preliminary hearing; Risk assessment.**

(a) Preliminary hearing. A preliminary hearing shall be held at the time and date specified on the citation or as otherwise ordered by the court. If a child is taken into custody prior to the preliminary hearing, the preliminary hearing shall be at the time of the temporary care hearing. Counsel for the child shall be assigned prior to the preliminary hearing.

(b) Risk and needs screening.

(1) Prior to the preliminary hearing, the child shall be afforded an opportunity to undergo a risk and needs screening, which shall be conducted by the Department or by a community provider that has contracted with the Department to provide risk and need screenings for children alleged to have committed delinquent acts.

(2) If the child participates in such a screening, the Department or the community provider shall report the risk level result of the screening, the number and source of the collateral contacts made, and the recommendation for charging or other alternatives to the State's Attorney. The State's Attorney shall consider the results of the risk and needs screening in determining whether to file a charge. In lieu of filing a charge, the State's Attorney may refer a child directly to a youth-appropriate community-based provider that has been approved by the Department, which may include a community justice center or a balanced and restorative justice program. Referral to a community-based provider pursuant to this subsection shall not require the State's Attorney to file a charge. If the community-based provider does not accept the case or if the child fails to complete the program in a manner deemed satisfactory and timely by the provider, the child's case shall return to the State's Attorney for charging consideration.

(3) If a charge is brought in the Family Division, the risk level result shall be provided to the child's attorney.

(c) Referral to diversion. Based on the results of the risk and needs screening, if a child presents a low to moderate risk to reoffend, the State's Attorney shall refer the child directly to court diversion unless the State's Attorney states on the record why a referral to court diversion would not serve the ends of justice. If the court diversion program does not accept the case or if the child fails to complete the program in a manner deemed satisfactory and timely by the provider, the child's case shall return to the State's Attorney for charging consideration.

(d) Guardian ad litem. At the preliminary hearing, the court shall appoint a guardian ad litem for the child. The guardian ad litem may be the child's parent, guardian, or custodian. On its own motion or motion by the child's attorney, the court may appoint a guardian ad litem other than a parent, guardian, or custodian.

(e) Admission; denial. At the preliminary hearing, a denial shall be entered to the allegations of the petition, unless the juvenile, after adequate consultation with the guardian ad litem and counsel, enters an admission. If the juvenile enters an admission, the disposition case plan required by section 5230 of this title may be waived and the court may proceed directly to disposition, provided that the juvenile, the custodial parent, the State's Attorney, the guardian ad litem, and the Department agree.

(f) Conditions. The court may order the child to abide by conditions of release pending a merits or disposition hearing.

### **33 V.S.A. § 5232. Disposition order.**

(a) If a child is found to be a delinquent child, the court shall make such orders at disposition as may provide for:

- (1) The child's supervision, care, and rehabilitation;
- (2) The protection of the community;
- (3) Accountability to victims and the community for offenses committed; and
- (4) The development of competencies to enable the child to become a responsible and productive member of the community.

(b) In carrying out the purposes outlined in subsection (a) of this section, the court may:

- (1) Place the child on probation subject to the supervision of the Commissioner, upon such conditions as the court may prescribe. The length of probation shall be as prescribed by the court or until further order of the court.



(2) Order custody of the child be given to the custodial parent, guardian, or custodian. For a fixed period of time following disposition, the court may order that custody be subject to such conditions and limitations as the court may deem necessary and sufficient to provide for the safety of the child and the community. Conditions may include protective supervision for up to six months following the disposition order unless further extended by court order. The court shall hold review hearings pursuant to section 5320 of this title to determine whether the conditions continue to be necessary.

(3) Transfer custody of the child to a noncustodial parent, relative, or person with a significant connection to the child. The court may order that custody be subject to such conditions and limitations as the court may deem necessary and sufficient to provide for the safety of the child and community, including protective supervision, for up to six months unless further extended by court order. The court shall hold review hearings pursuant to section 5320 of this title to determine whether the conditions continue to be necessary.

(4) Transfer custody of the child to the Commissioner.

(5) Terminate parental rights and transfer custody and guardianship to the Department without limitation as to adoption.

(6) Issue an order of permanent guardianship pursuant to 14 V.S.A. § 2664.

(7) Refer a child directly to a youth-appropriate community-based provider that has been approved by the Department, which may include a community justice center or a balanced and restorative justice program. Referral to a community-based provider pursuant to this subdivision shall not require the court to place the child on probation. If the community-based provider does not accept the case or if the child fails to complete the program in a manner deemed satisfactory and timely by the provider, the child shall return to the court for disposition.

(c) If the court orders the transfer of custody of the child pursuant to subdivisions (b)(4) and (5) of this section, the court shall establish a permanency goal for the child and adopt a case plan prepared by the Department designed to achieve the permanency goal. If the court determines that the plan proposed by the Department does not adequately support the permanency goal for the child, the court may reject the plan proposed by the Department and order the Department to prepare and submit a revised plan for court approval.

## **REGULATIONS**

### **22 000 009.4313.6. Referral to and action by law enforcement and judicial authorities.**

(a) Rule of construction. Nothing in this part prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or prevents State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

## **Disclosure of school records**

### **LAWS**

No relevant laws found.

## **REGULATIONS**

### **22 000 003.2124. Reporting of results.**

As required in 16 V.S.A. §165(a)(2), each school shall report student and system performance results to the community at least annually in a format selected by the school board. The report shall at minimum include those elements listed in 16 V.S.A. §165a(2)(A-K).

The performance criteria of the school shall be clear and be communicated to administrators, educators and other building staff.

Each supervisory union shall establish a secure student data system that enables regular access for teachers and administrators. Teachers shall have access to data on individual students whom they teach and aggregate data on student and system performance results. Administrators shall have access to individual student data and on student and system performance results.

For aggregate school data, in no case shall personally identifiable information on any student be revealed.

### **22 000 006. 2365.2.11. Consent.**

(c) Disclosure of special education and disciplinary records may be made without the prior written consent of the parent or a student aged 18 or older, if:

- (1) It is made in compliance with a lawfully issued subpoena or court order, and the school has made reasonable attempts to notify the parent or the student aged 18 or older of the order or subpoena before complying with the request, so he or she may seek protective action from the court, such as limiting the scope of the subpoena or quashing it; and
- (2) The subpoena or court order mandating disclosure specifies that 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; or
- (3) It is to law enforcement or other appropriate parties, and, if the required information from the educational records is needed in connection with an emergency and knowledge of the information is necessary to protect the health or safety of the student or other individuals.
- (4) If a parent refuses to give written consent when required for disclosure of personally identifiable information, the responsible LEA may seek an order from a due process hearing officer allowing disclosure.

### **22 000 006. 2365.2.15. Disciplinary Information in Student Records.**

(a) A participating agency shall include in the records of a child receiving special education services a statement of any current or previous disciplinary action that has been taken against the child and transmit the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of children not receiving special education services.

(b) The statement shall include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child.

(c) If the child transfers from one school to another, the transmission of any of the child's records shall include both the child's current individualized education program and any statement of current or previous disciplinary action that has been taken against the child as consistent with subsection (a) of this section.

### **22 000 009.4313.6. Referral to and action by law enforcement and judicial authorities.**

(b) Transmittal of records.

(1) An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.

(2) An agency reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

## **Data collection, review, and reporting of disciplinary policies and actions**

### **LAWS**

#### **16 V.S.A. §570. Harassment, hazing, and bullying prevention policies.**

(d) Duties of the commissioner. The commissioner shall:

(2) Establish an advisory council to review and coordinate school and statewide activities relating to the prevention of and response to harassment, hazing, and bullying. The council shall report annually in January to the state board and the house and senate committees on education. [...]

#### **16 V.S.A. § 570a. Harassment**

(b) Independent review.

(1) A student who desires independent review under this subsection because the student is either dissatisfied with the final determination of the school officials as to whether harassment occurred or believes that, although a final determination was made that harassment occurred, the school's response was inadequate to correct the problem shall make such request in writing to the headmaster or superintendent of schools. Upon such request, the headmaster or superintendent shall initiate an independent review by a neutral person selected from a list developed jointly by the Secretary of Education and the Human Rights Commission and maintained by the Secretary. Individuals shall be placed on the list on the basis of their objectivity, knowledge of harassment issues, and relevant experience.

(2) The independent review shall proceed expeditiously and shall consist of an interview of the student and the relevant school officials and review of written materials involving the complaint maintained by the school or others.

(3) Upon the conclusion of the review, the reviewer shall advise the student and the school officials as to the sufficiency of the school's investigation, its determination, the steps taken by the school to correct any harassment found to have occurred, and any future steps the school should take. The reviewer shall advise the student of other remedies that may be available if the student remains dissatisfied and, if appropriate, may recommend mediation or other alternative dispute resolution.

(4) The independent reviewer shall be considered an agent of the school for the purpose of being able to review confidential student records.

(5) The costs of the independent review shall be borne by the public school district or independent school.

(6) Nothing in this subsection shall prohibit the school board from requesting an independent review at any stage of the process.

(7) Evidence of conduct or statements made in connection with an independent review shall not be admissible in any court proceeding. This subdivision shall not require exclusion of any evidence

otherwise obtainable from independent sources merely because it is presented in the course of an independent review.

(8) The Secretary may adopt rules implementing this subsection.

#### **16.V.S.A. § 1166. Possession of a firearm at school.**

(a) In this section, the terms "to school" and "firearm" shall have the same meaning that the terms have in 18 U.S.C. § 921. The school board may expand the definitions, however, provided they remain consistent with federal law.

(b) Each school board shall adopt and implement policies regarding a student who brings a firearm to or possesses a firearm at school, which at a minimum shall include:

(1) A provision that any student who brings a firearm to or possesses a firearm at school shall be referred to a law enforcement agency. In addition to any other action the law enforcement agency may take, it may report the incident to the Department for Children and Families.

(2) A provision that the superintendent or principal, with the approval of the school board following opportunity for a hearing, shall expel from the school for not less than one calendar year any student who brings a firearm to or possesses a firearm at school; provided, however, the school board may modify the expulsion on a case-by-case basis. Modifications may be granted in circumstances such as:

(A) The student is unaware that he or she has brought a firearm to or possessed a firearm at school.

(B) The student did not intend to use the firearm to threaten or endanger others.

(C) The student has a disability and the misconduct is related to the student's disability.

(D) The student does not present an ongoing threat to others and a lengthy expulsion would not serve the best interests of the student.

(c) Annually at a time and on a form determined by the Secretary, each superintendent shall provide the Secretary with a description of the circumstances surrounding expulsions imposed under this section, the number of students expelled, and the type of firearm involved.

### **REGULATIONS**

#### **22 000 003.2124. Reporting of results.**

As required in 16 V.S.A. §165(a)(2), each school shall report student and system performance results to the community at least annually in a format selected by the school board. The report shall at minimum include those elements listed in 16 V.S.A. §165a(2)(A-K).

The performance criteria of the school shall be clear and be communicated to administrators, educators and other building staff.

Each supervisory union shall establish a secure student data system that enables regular access for teachers and administrators. Teachers shall have access to data on individual students whom they teach and aggregate data on student and system performance results. Administrators shall have access to individual student data and on student and system performance results.

For aggregate school data, in no case shall personally identifiable information on any student be revealed.

#### **22 000 003.2125. Continuous improvement plan.**

A Continuous Improvement Plan, as required in 16 V.S.A. §165, shall be developed and implemented in each public school district. The plan shall be designed to improve the performance of all students enrolled in the district. If a school district comprises more than one school building, a combined plan for some or

all the buildings may be developed. The plan, however, may reflect the different needs of individual schools.

The plan should be the overall planning and implementation document for the school, incorporating other planning requirements (either from the state, the federal government, local requirements, or external grant requirements) into a single planning document.

The plan shall be developed with the involvement of school board members, students, teachers, administrators, parents and other community members. The plan shall be reviewed at least annually for effectiveness toward meeting the stated goals, and shall be revised as necessary.

The plan shall include indicators provided by the Vermont Agency of Education as well as additional indicators determined locally. These indicators will identify student performance data obtained from state and local assessments and other information related to student performance which may include, but is not limited to, dropout and retention rates, attendance, course enrollment patterns and graduation rates. Indicators may also include data on school practices and leadership.

Agency support shall be differentiated in accordance with school needs, and shall work to reduce interventions for schools where student performance data indicates growth and success.

The school board shall approve the plan, which at minimum shall contain

- a. Goals and objectives for improved student learning;
- b. Educational strategies and activities specifically designed to achieve these goals, including professional learning of administrative and instructional staff;
- c. Strategies and supports to ensure the school maintains a safe, orderly, civil and positive learning environment which is free from harassment, hazing and bullying; and
- d. Required technical assistance from the Vermont Agency of Education as appropriate or determined by law.

#### **22 000 036.4505. Debriefing Following Use of Restraint or Seclusion.**

Following each incident of restraint or seclusion, the school administrator shall implement follow-up procedures that include:

- a. Within two (2) school days, a proper staff person reviewing the incident with the student in a manner appropriate to the student's age and developmental ability, to discuss the behavior[s] that precipitated the use of restraint or seclusion;
- b. Within two (2) school days, reviewing the incident with the staff person(s) who administered the restraint or seclusion to discuss whether proper restraint or seclusion procedures were followed, including the use of proper procedures to prevent the need for restraint or seclusion;
- c. An opportunity for parents to participate in the review of an incident of restraint or seclusion within four (4) school days:
  - i. Parents shall receive prior written (including e-mail) notice of the review meeting; and
  - ii. The meeting shall be convened at a mutually acceptable time and place; and
- d. Determining, in consultation with the parents, any specific follow up actions to be taken.

#### **22 000 036.4508. Monitoring and Corrective Action.**

The commissioner of the Department of Education shall review reports received pursuant to Rule 4503.4 and identify those schools in need of additional training and, when those reports reflect an over-use of these interventions, shall direct the school to work with the department to develop a corrective action plan.

## ***School Resource and Safety Officers (SROs/SSOs) and Truant/Attendance Officers***

### **Authority and power to implement school arrest**

#### **LAWS**

##### **16.V.S.A. § 1128. Legal pupil taken to school; nonresident child living in district.**

(a) A superintendent may and the truant officer shall stop a child between the ages of six and 16 years or a child 16 years of age or over and enrolled in public school, wherever found during school hours, and shall, unless such child is excused or exempted from school attendance, take the child to the school which she or he should attend.

(b) A child of legal school age who is not exempt from school attendance and who has not finished the elementary school course, and is living in a district other than the place of legal residence shall, with the school board's approval, be admitted immediately to a school in the district where he is found. If the child is not admitted to school, then immediate action shall be taken by the truant officer to cause the return of the child to the district of his residence.

##### **16.V.S.A. § § 1129. Jurisdiction of nonresidents.**

The superintendent of a school in which a nonresident pupil is enrolled and a truant officer having jurisdiction of the pupils in such school shall have the same authority and jurisdiction over such nonresident pupil and the person having the control of such pupil as they have over resident pupils and the persons having control of such pupils.

#### **REGULATIONS**

No relevant regulations found.

### **Certification or training**

#### **LAWS**

No relevant laws found.

#### **REGULATIONS**

No relevant regulations found.

### **MOUs, authorization, and/or funding**

#### **LAWS**

##### **16.V.S.A. § 1125. Truant officers.**

(a) A school board shall annually appoint one or more truant officers and record their appointments with the clerk of the school district on or before July 3. State police, sheriffs, deputy sheriffs, constables and police officers shall be truant officers ex officio.

(b) Truant officers shall receive remuneration for time actually spent in performance of their duties and shall be allowed their necessary expenses incurred in connection therewith.

**16.V.S.A. § 1126. Failure to attend; notice by teacher.**

When a student between the ages of six and 16 years, who is not excused or exempted from school attendance, fails to enter school at the beginning of the academic year, or being enrolled, fails to attend the school, and when a student who is at least 16 years of age becomes enrolled in a public school and fails to attend, the teacher or principal shall notify the truant officer and either the superintendent or the school board unless the teacher or principal is satisfied that the student is absent on account of illness.

**16.V.S.A. § 1127. Notice and complaint by truant officer; penalty.**

(a) The truant officer, upon receiving the notice provided in section 1126 of this title, shall inquire into the cause of the nonattendance of the child. If he or she finds that the child is absent without cause, the truant officer shall give written notice to the person having the control of the child that the child is absent from school without cause, and shall also notify that person to cause the child to attend school regularly thereafter.

(b) When, after receiving notice, a person fails, without legal excuse, to cause a child to attend school as required by this chapter, he or she shall be fined not more than \$1,000.00 pursuant to subsection (c) of this section.

(c) The truant officer shall enter a complaint to the town grand juror of the town in which such person resides, or to the State's Attorney of the county, and shall provide a statement of the evidence upon which the complaint is based. The grand juror or State's Attorney shall prosecute the person. In the prosecution, the complaint, information, or indictment shall be deemed sufficient if it states that the respondent (naming the respondent) having the control of a child of school age (naming the child) neglects to send that child to a public school or an approved or recognized independent school or a home study program as required by law.

**16.V.S.A. § 1128. Legal pupil taken to school; nonresident child living in district.**

(a) A superintendent may and the truant officer shall stop a child between the ages of six and 16 years or a child 16 years of age or over and enrolled in public school, wherever found during school hours, and shall, unless such child is excused or exempted from school attendance, take the child to the school which she or he should attend.

(b) A child of legal school age who is not exempt from school attendance and who has not finished the elementary school course, and is living in a district other than the place of legal residence shall, with the school board's approval, be admitted immediately to a school in the district where he is found. If the child is not admitted to school, then immediate action shall be taken by the truant officer to cause the return of the child to the district of his residence.

**16.V.S.A. § 1129. Jurisdiction of nonresidents.**

The superintendent of a school in which a nonresident pupil is enrolled and a truant officer having jurisdiction of the pupils in such school shall have the same authority and jurisdiction over such nonresident pupil and the person having the control of such pupil as they have over resident pupils and the persons having control of such pupils.

**16.V.S.A. § 1167. School resource officer; memorandum of understanding.**

(a) Neither the State Board nor the Agency shall regulate the use of restraint and seclusion on school property by a school resource officer certified pursuant to 20 V.S.A. § 2358.

(b) School boards and law enforcement agencies are encouraged to enter into memoranda of understanding relating to:

- (1) The possession and use of weapons and devices by a school resource officer on school property;  
and
- (2) The nature and scope of assistance that a school resource officer will provide to the school system.

## **REGULATIONS**

No relevant regulations found.



## ***State Education Agency Support***

### **State model policies and implementation support**

#### **LAWS**

##### **16 V.S.A. § 165. Education quality standards; equal educational opportunities; independent school meeting education quality standards.**

(a) In order to carry out Vermont's policy that all Vermont children will be afforded educational opportunities that are substantially equal in quality, each Vermont public school, including each career technical center, shall meet the following education quality standards:

(1) The school, through a process including parents, teachers, students, and community members, develops, implements, and annually updates a continuous improvement plan to improve student performance within the school. The plan shall include goals and objectives for improved student learning and educational strategies and activities to achieve its goals. The plan shall also address the effectiveness of efforts made since the previous continuous improvement plan to ensure the school maintains a safe, orderly, civil, and positive learning environment that is free from harassment, hazing, and bullying. The school shall assess student performance under the plan using a method or methods of assessment developed under subdivision 164(9) of this title.

(2) The school, at least annually, reports student performance results to community members in a format selected by the school board. In the case of a regional career technical center, the community means the school districts in the service region. The school report shall include:

(A) Information indicating progress toward meeting standards from the most recent measure taken.

(B) [Repealed.]

(C) Information indicating progress toward meeting the goals of an annual continuous improvement plan.

(D) Any other statistical information about the school or community that the school board deems necessary to place student performance results in context.

(E)-(G) [Repealed.]

(H) A description of how the school ensures that each student receives appropriate career counseling and program information regarding availability of education and apprenticeship program offerings at career technical centers.

(I) [Repealed.]

(J) If the school is a secondary school, information and supporting data presented in a manner designed to protect student confidentiality on the dropout and graduation rates.

(K) Data provided by the Secretary that enable a comparison with other schools, or school districts if school level data are not available, for cost-effectiveness. The Secretary shall establish which data are to be included pursuant to this subdivision and, notwithstanding that the other elements of the report are to be presented in a format selected by the school board, shall develop a common format to be used by each school in presenting the data to community members. The Secretary shall provide the most recent data available to each school no later than October 1 of each year. Data to be presented include student-to-teacher ratio, administrator-to-student ratio, administrator-to-teacher ratio, and cost per pupil.

(3) The school substantially meets standards adopted by rule of the State Board regarding conditions, practices and resources of schools. The standards shall address those aspects of the following that are most closely associated with improving student performance:

- (A) School leadership, staffing, and support services;
- (B) Instructional practices and curriculum leadership, content, and coordination;
- (C) Educational materials and school facilities;
- (D) Access to current technology.

(4) The school shall provide for and the staff shall use needs-based professional development designed to improve the quality of education provided to the students and directly connected to standards for student performance established by the State Board and any other educational performance goals established by the school board.

(5) The school uses staff evaluation to advance educational performance objectives.

(6) The school ensures that students receive appropriate career counseling and program information regarding the availability of education and apprenticeship program offerings at career technical centers. In addition, the school, if it is a secondary school, offers a genuine opportunity to access career technical education programs.

(7) The school ensures that students are furnished educational services in accordance with any State or federal entitlements and in a nondiscriminatory manner.

(8) The school maintains a safe, orderly, civil, and positive learning environment that is free from hazing, harassment, and bullying, and is based on sound instructional and classroom management practices and clear discipline policies that are consistently and effectively enforced.

[Subsection (b) effective until July 1, 2020; see also subsection (b) effective July 1, 2020 set out below.]

(b) Annually, the Secretary shall determine whether students in each Vermont public school are provided educational opportunities substantially equal to those provided in other public schools. If the Secretary determines that a school is not meeting the education quality standards listed in subsection (a) of this section or that the school is making insufficient progress in improving student performance in relation to the standards for student performance set forth in subdivision 164(9) of this title, he or she shall describe in writing actions that a district must take in order to meet either or both sets of standards and shall provide technical assistance to the school. If the school fails to meet the standards or make sufficient progress within two years of the determination, the Secretary shall recommend to the State Board one or more of the following actions:

- (1) Continue technical assistance;
- (2) Adjust supervisory union boundaries or responsibilities of the superintendency;
- (3) Assume administrative control only to the extent necessary to correct deficiencies; or
- (4) Close the school and require that the school district pay tuition to another public school or an approved independent school pursuant to chapter 21 of this title.

[Subsection (b) effective July 1, 2020; see also subsection (b) effective until July 1, 2020 set out above.]

(b) Annually, the Secretary shall determine whether students in each Vermont public school are provided educational opportunities substantially equal to those provided in other public schools. If the Secretary determines that a school is not meeting the education quality standards listed in subsection (a) of this section or that the school is making insufficient progress in improving student performance in relation to the standards for student performance set forth in subdivision 164(9) of this title, he or she shall describe in writing actions that a district must take in order to meet either or both sets of standards and shall provide technical assistance to the school. If the school fails to meet the standards or make sufficient

progress within two years of the determination, the Secretary shall recommend to the State Board one or more of the following actions:

- (1) The Agency continue to provide technical assistance for one more cycle of review;
  - (2) The State Board adjust supervisory union boundaries or responsibilities of the superintendency pursuant to section 261 of this title;
  - (3) The Secretary assume administrative control of an individual school, school district, or supervisory union, including budgetary control to ensure sound financial practices, only to the extent necessary to correct deficiencies;
  - (4) The State Board close an individual school or schools and require that the school district pay tuition to another public school or an approved independent school pursuant to chapter 21 of this title; or
  - (5) The State Board require two or more school districts to consolidate their governance structures.
- (c) The State Board, after offering the school board an opportunity for a hearing, shall either dismiss the Secretary's recommendation or order that one or more of the actions listed in subsection (b) of this section be taken. The action ordered by the State Board shall be the least intrusive consistent with the need to provide students attending the school substantially equal educational opportunities. A school board aggrieved by an order of the State Board may appeal the order in accordance with the Rules of Civil Procedure.
- (d) Nothing in this section shall be construed to entitle any student to educational programs or services identical to those received by students in the same or any other school district. Further, nothing in this section shall create a private right of action.
- (e) If the Secretary determines at any time that the failure of a school to meet the education quality standards listed in subsection (a) of this section is severe or pervasive, potentially results in physical or emotional harm to students, or significant deprivation of equal education opportunities, and the school has either unreasonably refused to remedy the problem or its efforts have proved ineffective, he or she may recommend to the State Board one or more of the actions listed in subsection (b) of this section. The State Board shall then follow the procedure of subsection (c) of this section.
- (f) In order to be designated an independent school meeting education quality standards, an independent school shall participate in the education quality standards process of subsection (b) of this section. An independent school shall receive technical assistance in accordance with the provisions of subsection (b), but shall not be subject to subdivisions (b)(2)-(4) of this section. The school shall be an independent school meeting education quality standards unless the State Board, after opportunity for hearing, finds that:
- (1) The school has discontinued its participation in the education quality standards process; or
  - (2) Two or more years following a determination that the school is not meeting the education quality standards or that the school is making insufficient progress in improving student performance, the school fails to meet the standards or make sufficient progress toward meeting the standards.

## **REGULATIONS**

### **22 000 003.2125. Continuous improvement plan.**

A Continuous Improvement Plan, as required in 16 V.S.A. §165, shall be developed and implemented in each public school district. The plan shall be designed to improve the performance of all students enrolled in the district. If a school district comprises more than one school building, a combined plan for some or all the buildings may be developed. The plan, however, may reflect the different needs of individual schools.

The plan should be the overall planning and implementation document for the school, incorporating other planning requirements (either from the state, the federal government, local requirements, or external grant requirements) into a single planning document.

The plan shall be developed with the involvement of school board members, students, teachers, administrators, parents and other community members. The plan shall be reviewed at least annually for effectiveness toward meeting the stated goals, and shall be revised as necessary.

The plan shall include indicators provided by the Vermont Agency of Education as well as additional indicators determined locally. These indicators will identify student performance data obtained from state and local assessments and other information related to student performance which may include, but is not limited to, dropout and retention rates, attendance, course enrollment patterns and graduation rates. Indicators may also include data on school practices and leadership.

Agency support shall be differentiated in accordance with school needs, and shall work to reduce interventions for schools where student performance data indicates growth and success.

The school board shall approve the plan, which at minimum shall contain

- a. Goals and objectives for improved student learning;
- b. Educational strategies and activities specifically designed to achieve these goals, including professional learning of administrative and instructional staff;
- c. Strategies and supports to ensure the school maintains a safe, orderly, civil and positive learning environment which is free from harassment, hazing and bullying; and
- d. Required technical assistance from the Vermont Agency of Education as appropriate or determined by law.

## **Funding appropriations**

### **LAWS**

No relevant laws found.

### **REGULATIONS**

No relevant regulations found.

## ***Other or Uncategorized***

### **Professional immunity or liability**

#### **LAWS**

##### **16 V.S.A. § 1165. Alcohol and drug abuse.**

(e) No municipality, school district, or officer or employee of the school district shall be liable for civil damages in connection with the implementation of the purposes of this section so long as they have acted in good faith and not knowingly in violation of the constitutional or civil rights of any person.

#### **REGULATIONS**

No relevant regulations found.

### **Community input or involvement**

#### **LAWS**

##### **16 V.S.A. § 165. Education quality standards; equal educational opportunities; independent school meeting education quality standards.**

(a) In order to carry out Vermont's policy that all Vermont children will be afforded educational opportunities that are substantially equal in quality, each Vermont public school, including each career technical center, shall meet the following education quality standards:

(1) The school, through a process including parents, teachers, students, and community members, develops, implements, and annually updates a continuous improvement plan to improve student performance within the school. The plan shall include goals and objectives for improved student learning and educational strategies and activities to achieve its goals. The plan shall also address the effectiveness of efforts made since the previous continuous improvement plan to ensure the school maintains a safe, orderly, civil, and positive learning environment that is free from harassment, hazing, and bullying. The school shall assess student performance under the plan using a method or methods of assessment developed under subdivision 164(9) of this title.

(8) The school maintains a safe, orderly, civil, and positive learning environment that is free from hazing, harassment, and bullying, and is based on sound instructional and classroom management practices and clear discipline policies that are consistently and effectively enforced.

##### **16 V.S.A. § 570. Harassment, hazing, and bullying prevention policies**

(d) Duties of the commissioner. The commissioner shall:

(1) Develop and, from time to time, update model harassment, hazing, and bullying prevention policies; and

(2) Establish an advisory council to review and coordinate school and statewide activities relating to the prevention of and response to harassment, hazing, and bullying. The council shall report annually in January to the state board and the house and senate committees on education. The council shall include:

(A) The executive director of the Vermont Principals' Association or designee;

(B) The executive director of the Vermont School Boards Association or designee;

(C) The executive director of the Vermont Superintendents Association or designee;

- (D) The president of the Vermont-National Education Association or designee;
- (E) The executive director of the Vermont Human Rights Commission or designee;
- (F) The executive director of the Vermont Independent Schools Association or designee; and
- (G) Other members selected by the commissioner, at least one of whom shall be a current secondary student who has witnessed or experienced harassment, hazing, or bullying in the school environment.

(e) Definitions. In this subchapter:

- (1) "Educational institution" and "school" mean a public school or an approved or recognized independent school as defined in section 11 of this title.
- (2) "Organization," "pledging," and "student" have the same meanings as in subdivisions 140a(2), (3), and (4) of this title.
- (3) "Harassment," "hazing," and "bullying" have the same meanings as in subdivisions 11(a)(26), (30), and (32) of this title.
- (4) "School board" means the board of directors or other governing body of an educational institution when referring to an independent school.

## **REGULATIONS**

### **22 000 009.4212. Policy requirements.**

School districts shall adopt an alcohol and drug abuse policy which shall contain the following:

#### **4212.3. Support and referral systems and cooperative agreements.**

The policy shall provide for a support and referral system for students in distress due to their own or another's use of alcohol or other drugs. Such a system shall include both a clearly defined in-school process for initial assessment, support, and if necessary, referral to community resources of such students, and a written referral agreement with at least one community substance abuse treatment provider approved by the Office of Alcohol and Drug Abuse Programs. Such an agreement should define the process for making an effective referral and the nature and extent of information to be provided during and after such a referral to all parties involved.

## **Other or Uncategorized**

### **LAWS**

No relevant laws found.

### **REGULATIONS**

No relevant regulations found.

## State-Sponsored, Publicly Available Websites or Other Resources on School Discipline

Safe, supportive learning environments use disciplinary policies and practices that help students stay out of the justice system, while ensuring academic engagement and success for all students. The following resources provided by Vermont provide additional context to state policy and regulations and, in some cases, may support the readers' efforts to provide a positive disciplinary school climate.

<i>Title</i>	<i>Description</i>	<i>Website address (if applicable)</i>
<b>Website</b>		
Vermont Agency of Education, School Climate	Provides an overview of school climate and information about the Harassment, Hazing, and Bullying Prevention Advisory Council (HHB). Includes links to model policies and data on harassment, hazing and bullying incidents in Vermont schools.	<a href="http://education.vermont.gov/student-support/healthy-and-safe-schools/school-climate">http://education.vermont.gov/student-support/healthy-and-safe-schools/school-climate</a>
Vermont Agency of Education, Multi-tiered System of Supports	Presents information on multi-tiered system of supports in Vermont schools and provides links to briefs, surveys, and toolkits for educators.	<a href="https://education.vermont.gov/student-support/multi-tiered-system-supports">https://education.vermont.gov/student-support/multi-tiered-system-supports</a>
Vermont Agency of Education, Substance Use Prevention	Addresses substance use prevention and introduces the tobacco use prevention program including links to tobacco prevention resources and other substance abuse prevention programs.	<a href="http://education.vermont.gov/student-support/healthy-and-safe-schools/substance-abuse">http://education.vermont.gov/student-support/healthy-and-safe-schools/substance-abuse</a>
<b>Documents</b>		
Model Policy on the Prevention of Harassment, Hazing, and Bullying of Students (August 2016), Vermont Agency of Education	Model policy addressing prevention of harassment, hazing and bullying of students in Vermont schools.	<a href="https://education.vermont.gov/sites/aoe/files/documents/edu-healthy-safe-schools-hhb-model-policy.docx">https://education.vermont.gov/sites/aoe/files/documents/edu-healthy-safe-schools-hhb-model-policy.docx</a>
Manual of Rules and Practices Series 4500 – Use of Restraint and Seclusion in Schools, Vermont State Board of Education	Manual of education rules and statutes on the use of restraint and seclusion in schools.	<a href="http://education.vermont.gov/sites/aoe/files/documents/edu-state-board-rules-series-4500.pdf">http://education.vermont.gov/sites/aoe/files/documents/edu-state-board-rules-series-4500.pdf</a>

<i>Title</i>	<i>Description</i>	<i>Website address (if applicable)</i>
<b><i>Other Resources</i></b>		
Harassment, Hazing, and Bullying Data, Vermont Agency of Education	School district data on the number of reported incidents of harassment, hazing and bullying in Vermont schools.	<a href="https://education.vermont.gov/student-support/healthy-and-safe-schools/school-climate#data">https://education.vermont.gov/student-support/healthy-and-safe-schools/school-climate#data</a>
School Reports, Vermont Agency of Education	School reports on student support services and enrollment data by school and grade level.	<a href="http://education.vermont.gov/data-and-reporting/school-reports">http://education.vermont.gov/data-and-reporting/school-reports</a>
Rule 4500 – Use of Restraint and Seclusion in Schools Questions and Answers, Vermont State Board of Education	Guidance document providing questions and answers on the use of restraint and seclusion in Vermont schools.	<a href="http://education.vermont.gov/sites/aoe/files/documents/edu-rule-4500-questions-answers-rebranded.pdf">http://education.vermont.gov/sites/aoe/files/documents/edu-rule-4500-questions-answers-rebranded.pdf</a>