



STATE BOARD OF EDUCATION

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## **Vermont State Board of Education Manual of Rules and Practices**

### **Series 4000 - Pupils**

#### **4000 PUPILS**

#### **4100 STATUTORY AUTHORITY**

The Vermont Statutes Annotated address the areas of school attendance, truancy, discipline, punishment, health, safety, and transportation. Refer to the statutes for specific laws.

The subject of "student records" is addressed elsewhere in this manual. Refer to "Records, student" in the index.

#### **Section 4101 Safety Program.**

Every school district receiving federal and/or state funds for program support will develop a program of safety, institute that safety program, and monitor it to make sure it is kept current.

#### **Section 4102 Emergency Plan.**

Superintendents and school boards shall develop a comprehensive emergency plan for each school that will be updated and tested annually and a functional emergency organization.

The plan shall include provision for such disasters as fire, smoke, tornado, nuclear disaster, snow, blizzard, ice, flood, earthquake, bomb threat, civil disturbance, bus accidents and other emergencies.

#### **4200 ALCOHOL AND DRUGS**

#### **4210 Statutory Authority. 16 V.S.A., § 1165.**

##### *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.

##### *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.

## **4300 DISCIPLINARY ACTION**

### **4310 Statutory Authority. 16 VSA § § 1162 and 1166**

#### *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).

Section 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.

#### *4313 Discipline Procedures for Children Eligible for Special Education Services.*

In addition to the general disciplinary procedures found within Rule 4300, the following procedures apply to children eligible for special education services:

##### **4313.1 Authority of School Personnel.**

(a) Case-by-case determination. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the requirements of this section, is appropriate for a child with a disability who violates a code of 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 shall notify the parents of that decision, and provide the parents a copy of their Parents' Rights in Special Education.



(i) Definitions. For purposes of this section, the following definitions apply:

(1) Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c), as amended).

(2) Illegal drug means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

(3) Serious bodily injury has the meaning given the term "serious bodily injury" under Section 1365(h)(3)(A- D) of Title 18, United States Code, as amended.

(4) Weapon has the meaning given the term "dangerous weapon" under of Section 930(g)(2) of Title 18, United States Code, as amended.

#### **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.

#### **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.

#### **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.

#### **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.

#### **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.

(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.

#### **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.

### **4400 INTEGRATION OF HOME STUDY STUDENTS**

*4401 Statutory Authority. Section 1(c) of Act 119 of 1998; 16 V.S.A. § 563(24).*

*4402 Definitions.*

"Facilities" means the portions of a school building and grounds used by students for classes, study and co-curricular or extracurricular activities.

"Home study student" means a student enrolled in a registered home study program pursuant to 16 V.S.A. § 166b.

"Integrated course" means a course covering two or more subjects that are taught in a unified manner by one teacher or team where the subjects cannot be separated into discrete sections for purposes of student attendance.

*4403 Part-time Enrollment of Home Study Students in Public School Academic Programs.*

4403.1 A home study student shall be eligible to enroll as a part-time student in a school operated by his or her district of residence or, if the district does not operate a school, in a public school for which his or her district of residence is required to pay tuition.

4403.2 Each school board shall adopt, by July 1, 1999, policies and procedures to ensure that home study students who request part-time enrollment in academic courses or programs are accepted into those courses or programs, and are furnished with required learning materials, on the same basis as full-time students.

4403.3 Policies and procedures adopted under this rule shall:

(a) upon inquiry by a home study student or parent, require the provision by the district of the student's residence of information concerning the availability of part-time enrollment in school. Such information shall include procedures, including registration deadlines, that home study students must follow to enroll on a part-time basis in the schools operated by the home study student's district of residence. In the event the district of residence does not operate a school in the grades appropriate to the inquiring student, the student or parents shall be given information on how to contact neighboring school districts that accept tuition students from the district of residence.

(b) apply the same enrollment procedures and deadlines to home study students that apply to full-time students.

(c) specify any enrollment capacity limits that the school board will apply to particular academic courses or grade levels. Capacity limits shall apply equally to home study and full-time students.

(d) establish criteria to determine whether home study students are eligible to enroll in integrated courses and courses that are available only to students who fulfill prerequisites. Criteria applied to courses with prerequisites shall be applied equally to home study and full-time students. Reasonable indications that academic criteria have been met, including results from achievement tests or other indications of adequate preparation, may be required of home study students, so long as those students are required to meet the same prerequisite standards as full-time students.

(e) establish informal and expeditious processes to appeal denials of requests for part-time enrollment to administrators and/or the school board.

*4404 Participation of Home Study Students in Public School Co-curricular and Extracurricular Activities.*

4404.1 A home study student shall be eligible to participate in or, when selection to participate in an activity is made on a competitive basis, to try out for, one or more co-curricular or extracurricular activities at a school operated by his or her district of residence or, if the district does not operate a school, at a public school for which his or her district is required to pay tuition. This rule is not intended to confer a right upon any student to participate in any activity. Although a home student need not enroll in academic programs to participate in activities under this rule, he or she must show compliance with insurance, physical examination, age, transfer and other requirements of the Vermont Principals Association on the same basis as enrolled students.

4404.2 Each school board shall adopt, by July 1, 1999, policies and procedures to ensure that home study students who wish to participate in co-curricular or extracurricular activities are accepted into those activities without first being required to enroll as part-time students at the sponsoring school.

4404.3 Policies and procedures adopted under this rule shall:

(a) upon inquiry by a home study student or parent, require the provision by the district of the student's residence of information concerning the eligibility of home study students to participate in co-curricular or extracurricular activities. Such information shall include procedures, including registration deadlines, that home study students must follow to participate in activities at schools operated by the home study student's district of residence. In the event the district of residence does not operate a school in the grades appropriate to the inquiring student, the student or parents shall be given information on how to contact neighboring school districts that accept tuition students from the district of residence.

(b) apply the same activity registration deadlines to home study students that apply to full-time students.

(c) apply the same academic eligibility requirements to home study students that apply to full-time students. Policies may require the parents of home study students to provide assurances that the school's academic eligibility standards are being met. Such assurances may be required at the same intervals during the year as is required of full-time students. A home study parent's assurance that the student meets the district's academic standards, provided at the intervals required by the school, shall be sufficient to satisfy academic eligibility requirements.

(d) establish priorities and criteria for admitting students to particular activities. When space is limited in a particular activity, preference may be given to enrolled students as long as the reporting requirement in §4404.4 of these rules is met. Procedures for admitting home study

students to activities with limited spaces may include lotteries, first-come-first-served waiting lists and performance-based criteria for participation on sports teams or in activities.

(e) Policies adopted in compliance with this rule shall establish informal and expeditious procedures to appeal denials of requests to participate in activities to administrators and/or the school board.

4404.4 When a home study student's request to participate in an activity is denied on the grounds that space is not available and that preference is given to full-time students, the school shall, within 30 days of the denial, notify the Home Study Consultant at the Department of Education on a form provided by the Department.

#### *4405 Use of School Facilities by Home Study Students.*

4405.1 A home study student may use facilities at a school operated by his or her district of residence or, if the district does not operate a school, at a public school for which his or her district is required to pay tuition.

4405.2 Each school board shall adopt, by July 1, 1999, policies and procedures to ensure that home study students are allowed to use school facilities on the same basis as full-time students.

4405.3 Policies and procedures adopted under this rule shall:

(a) apply to home study students the same criteria, procedures and deadlines for requesting the use of school facilities as are applied to full-time students.

(b) upon inquiry by a home study student or parent, require the provision by the district of the student's residence of information concerning the use of school facilities operated by the district. In the event the district does not operate a school in the grades appropriate to the inquiring student, the student or parents shall be given information on how to contact neighboring school districts which accept tuition students from the district of residence.

(c) provide for the establishment of criteria to determine whether sufficient space is available to comply with specific requests for facilities use. Criteria may also be developed to establish fees, to be applied equally to home study and full-time students, for security, janitorial or other services not normally available at the time of the requested use.

HISTORY: STATUTORY AUTHORITY: 16 VSA §§ 563(24), 1162, 1165 and 1166

EFFECTIVE DATE: June 5, 1991

AMENDED: August 20, 1994 Secretary of State Rule Log #94-62; January 25, 1996 Secretary of State Rule Log #96-03; May 9, 1997 Secretary of State Rule Log #97-14; August 1, 1999 Secretary of State Rule Log #99-35; August 24, 2006 Secretary of State Rule Log #06-023 4312 and 4313 ; September 17, 2007 Secretary of State Rule Log #07-033 4313 ; June 10, 2010 Secretary of State Rule Log #10-011 4312; 4313