

Philip Eller 4/1/15

Vermont Special Education Eligibility Requirements

Vermont is different than ALL other 49 states in its special education eligibility requirements, especially in the area of Adverse Effect. The guidelines require three steps or gates in the process that show: 1) an established disability, 2) an Adverse Effect of this disability on the educational performance of the student, and 3) the need for specialized education. Federal special education law (IDEA) permits states to write their own regulations as to eligibility – as long as they are not more restrictive than federal law. The Vermont regulations are more restrictive as to Adverse Effect because they are taken from those applying only to Specific Learning Disability and then applied to all other 12 categories of disability. Vermont requires Adverse Effect of the disability in at least one of eight Basic Skills areas: Oral Expression, Listening Comprehension, Written Expression, Basic Reading Skills, Reading Comprehension, Mathematics Calculation, Mathematical Reasoning, and Motor Skills – as determined by scoring in the 15 %ile on three of six measures: 1) Individually administered nationally normed achievement test (e.g. Woodcock Johnson III), 2) Normed group administered achievement test (e.g. Stanford Achievement Test – none are rarely used in VT), 3) Grades, 4) Curriculum- based measures (e.g. AIMS Web), 5) Criterion-referenced or group administered assessments (e.g. NECAP), 6) Student work (e.g. samples, portfolios). Thus, eligibility for special education services in Vermont is completely academic performance based. ALL other states factor in eligibility aspects related to functional performance, such as ability to attend to class work, to cooperate with peers, to regulate emotions, to control behavior, to perceive correctly the intent of others, to inference and understand social and academic nuances, etc.

These and other examples of functional performance are critical in the learning process and to success in the academic environment. And they, in other states, are factored into the need for special education services. Functional performance is a special challenge for many students on the Autism Spectrum (ASD), especially on the 'higher' end of the continuum – and it also factors into needs of students with ADD (Attention Deficit Disorder), many students with emotional difficulties, and others. Many students with ASD et al often are intellectually bright and test well in one-on-one and even some group assessments, but to be academically successful in class their disability impedes their performance. They may often score well in four of the six assessments (mentioned above), but their actual ability to perform IN the classroom is impacted by their disability. This is where they need the services of the special education system. The Common Core standards heavily stress the functional skills aspects of public education.

When the Vermont Agency of Education was developing rules and regulations in response to federal IDEA law, it applied the specific and stringent academic guidelines of eligibility for Specific Learning Disability to ALL other disability categories – with the intention of reducing the number of students eligible for special education in order to reduce the cost of special education to the state. This was in violation of the IDEA, both in the legal sense as well as in the spirit of the IDEA act.

The Vermont Autism Task Force respectfully requests that the Vermont special education eligibility regulations be amended to include the factor of Functional Performance for all students and thus enhance their opportunity to obtain FAPE (Free and Appropriate Public Education), as well as adequate preparation for “life after school” and their ability to compete successfully in the job market as adults.

Respectfully submitted,

Philip Eller: Executive Director/Educational Advocate – Special Needs Support Center
12 Flynn St. Lebanon NH 03766 603-448-6311 Phil@sns-cv.org

Member: Vermont Autism Task Force