

TESTIMONY on Adverse Effect

Agency of Education

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Points of Interest:

1. The state has come into much greater consistency of practice with adverse effect since the new rule was implemented well over 10 years ago. Prior to that, practice was all over the place, hence the development of the rule. The rule was put into effect in the mid 1990s to address:
 - a) Concerns over the equity of services and eligibility practices across the state
 - b) The means to identify cost-effective strategies for providing needed services to students with disabilities
 - c) To further emphasize the need for schools to develop general education support systems within their schools other than a special education model, as directed with Legislative Acts 230 and 157.
 - d) As a means of distinguishing the need for special education services from the needs of gifted Learning Disabled students, students with gaps in their cognitive and achievement profiles but working well within levels expected for their age or grade levels.
2. The state is split in one particular area with regard to practice on the current rule. The area of difference focuses on the impact of social and emotional functioning in contrast to only academic areas of measure. Guidance and training is needed in this area.
3. It always remains true that the ultimate decision about whether or not a student shows adverse effect belongs to the team. Evaluation Planning Team (EPT) members include:
 - a. the parents/guardians of the student
 - b. the student's general education teacher
 - c. the student's special education teacher
 - d. a representative of the public agency who: is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of the student; is knowledgeable about the general education curriculum; and is knowledgeable about the available of resources of the public agency.
 - e. an individual who can interpret the instructional implications of evaluation results who may also be included as any of a through f.
 - f. at the discretion of the parent or agency, other individuals who have knowledge or special expertise regarding the student including related service personnel as appropriate; and
 - g. whenever appropriate, the student with a disability.
4. There has been a request from the parent advocacy community to add a basic skill area of social skills for the purposes of considering adverse effect. This would require opening the rules. The AOE is in the process of convening a stakeholder group to consider the need for guidance as well as the need to open the rule.
5. If the stakeholder group is unable to come to consensus around adverse effect, the AOE will take the varied perspectives into consideration and make decisions with regard to the areas in question.
6. The process to clarify adverse effect should take no longer than 6 months and be ready for implementation by Fall 2015. The timeline is as follows:

April: A stakeholder group is established and the first planning meeting is scheduled. Roles and responsibilities will be distributed.

May: A second meeting is conducted. Results of gathered information and research will be discussed. Next steps determined.

June: A DRAFT guidance document is written, given the data collected and information gathered. If further information is needed, time will be allotted.

July and August: A guidance document is written and training for the fall is planned.

September – December: Training in the field occurs. Documents are posted on the AOE web.

Points of importance:

1. Social skills are not measured on students in general education which makes it more challenging to consider this as an area of measure for students who have disabilities. There also are no data on the number of students who are not identified due to the adverse effect criteria. This is a topic that will be researched by the adverse effect stakeholder group. The plan includes gathering the data and based on this factual information, moving forward with a plan to either clarify or amend the rule. Opening the rule at this time, without gathering the data, without considering the implications, and without including important stakeholders, will move this ahead at a pace that will force decisions to be made without any real investigation into the impact on students.

Opening the rules at this time will require a process that can take up to 8 months.
(See the attached RULEMAKING PROCESS:VERMONT STATE BOARD OF EDUCATION.)

2. The current basic skills include:

- a) Oral expression
- b) Listening Comprehension
- c) Written Expression
- d) Basic Reading Skill
- e) Reading Comprehension
- f) Math Calculation
- g) Math Reasoning
- h) Motor Skills

3. There are 78 Multi-Tiered Systems of Support (MTSS) schools in 34 SUs throughout Vermont. (300 schools/59 SUs). The emphasis in recent years on strengthening MTSS has resulted in fewer students in need of special education because standard supports in the schools are able to meet the needs of more students.

4. Students who are not found eligible for IEP services may be eligible for Section 504 of the Rehabilitation Act of 1973

Section 504 is a civil rights statute and not a special education statute. It has a broader scope than the Individuals with Disabilities Education Act (IDEA). It focuses on insuring a level of access to education services (including both academic and extra-curricular activities) that is equal to the level of access provided to non-disabled students. This includes providing eligible students who have a physical or mental disability with a free appropriate public education (FAPE).

Eligibility criteria includes:

- 1. The student must have a physical or mental impairment, have a record of such impairment or be regarded as having such an impairment
- 2. That impairment must substantially limit
- 3. One or more major life activities.

5. Act 157: An Act Relating to a Comprehensive System of Education Services for All Students

In 1996 Act 230 was reauthorized as Act 157 and requires that schools develop a comprehensive educational support system (ESS) with the capacity to provide a range of social, academic and behavioral supports. Act 157 extends the focus beyond academics to include those factors that may have a detrimental impact on a student's school performance (i.e. nutrition, mental health, challenging life circumstances). IST's became educational support teams (EST's) to reflect the broader focus.

NOTE: Act 230, passed in 1990 by the Vermont Legislature, was the initial piece of legislation that required all schools to establish instructional support systems (ISSs) to ensure the early identification of students at risk and the capability of meeting their needs. It included an instructional support team (IST) for collaborative problem solving to assist teachers, and it provided grants for professional development activities to meet students' academic needs, to the extent possible, in the regular classroom. In 1996 Act 230 was reauthorized as Act 157.

