



**Testimony to Senate Education Committee on “Adverse Effect” in Special Education Eligibility Decisions  
April 7, 2015**

**Jo-Anne Unruh, VCSEA Executive Director <junruh@vcsea.net>**

**Donarae Dawson, Chair, VCSEA Rules and Regulations Committee <ddawson@wwsu.org>**

VCSEA has taken seriously the concerns expressed by the Disability Law Project and the Autism Task Force to the Special Education Advisory Council and Agency of Education regarding the implementation of Adverse Effect. In the absence of a definition of adverse effect on educational performance within the federal IDEA the definition was left to the discretion of the individual states. Vermont’s Adverse Effect criteria do provide consistency in implementation for Evaluation Planning Teams throughout the state. However, we are aware that the implementation of Adverse Effect within the Vermont Special Education Rules is a source of some variation in practice regarding students with social skills and social communication, and behavioral challenges.

- The impact of Vermont’s adverse effect standards in determining the extent to which behavioral and emotional challenges impact educational progress is a complex one, and one that deserves some focused and representative stakeholder attention.
- Determining adverse effect falls within the legal responsibilities of the Evaluation and Planning Team (EPT) process. The EPT is charged with developing the evaluation plan, conducting the comprehensive evaluation and determining eligibility under IDEA and Vermont’s Special Education Regulations. The EPT includes LEA representative, special education teacher, general education teacher, an individual who can interpret instructional implications of evaluation results, other individuals who have knowledge or special expertise regarding the student including related services personnel, as appropriate, at the discretion of the school district, parent(s), guardian or education surrogate parent, and if appropriate, the student.
- VCSEA has conducted a survey of special education administrators in Vermont in to explore practice in determining adverse effect within the Evaluation and Planning Team (EPT) process. The results of this survey conducted early in 2015 point to the majority of special education administrators assessing that more state-wide guidance is needed in implementing Adverse Effect as currently defined in the Vermont Special Education Regulations regarding students with social skills, social language and behavioral challenges. Further guidance is needed in the team’s consideration of how social and emotional function impact academic measures, and the establishment of need for special education services for students who can perform in the basic skills areas but who have emotional and behavioral issues, and social and communication difficulties.
- VCSEA welcomes the plan and timeline proposed by the AOE and is prepared to participate actively in a stakeholder process. We believe that the Special Education Rules should not be opened until the participants in the stakeholder group are clear about the specific issues that need addressing, the reasons for inconsistency in implementation, and training is developed and implemented to address these issues.