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DISABILITY LAW PROJECT

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Testimony of Marilyn A. Mahusky, Staff Attorney, Disability Law Project
of Vermont Legal Aid, Inc.
(January 19, 2017)

Thank you for the opportunity to speak with you this afternoon. By way of introduction, I am a Staff Attorney with Vermont Legal Aid's Disability Law Project and have been for twenty-five years. In this capacity, I have represented students with disabilities in educational matters ranging from informal meetings at schools, IEP and 504 meetings, in mediations and in due process hearings, the administrative review process for parents challenging decisions made by their local educational agency (LEA). I am familiar with Vermont's special education rules, and the requirements of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§1401 *et seq.*, and its implementing regulations, 34 C.F.R. Part 300, and also both state and federal anti-discrimination laws, including the Americans with Disabilities Act, 42 U.S.C. §§12101 *et seq.*, Section 504 of the Rehabilitation Act, 29 U.S.C. §§ 701 *et seq.* which applies to any entity receiving public funds, and Vermont's Fair Housing and Public Accommodations Act, 9 V.S.A. §4502. Of relevance to this discussion, I have represented students with disabilities attending approved independent schools whose special education services were provided by the LEA.

Historically, children with disabilities were excluded from educational settings, warehoused in segregated schools, and denied access to an education. My own aunt was not educated past the first grade because of an intellectual disability. Today, my nephew who has Autism will stay in school until his 22nd birthday. Congress passed the Education for all Handicapped Children Act, the predecessor of the IDEA, in 1975, to address the gross inequity of educational opportunity for children with disabilities. Vermont has a long-standing policy, enshrined in our constitution, that "all Vermont children will be afforded educational opportunities that are substantially equal in quality." 16 V.S.A. §165; *see also* Vermont Constitution, Chapter II, §68. This includes children with disabilities. As a nation and as a state, we have come a long way. However, one of the last barriers to equal educational opportunity in Vermont is the unequal treatment of students with disabilities in accessing an independent school education.

Proposed changes to SBE Rule 2200 should be viewed as extending the civil rights' protections of the IDEA, Section 504, the ADA, and Vermont's Public Accommodations Act to children educated in independent schools *paid for by public tuition dollars*. Unfortunately, children with disabilities are still excluded from independent schools – either, they are not accepted for admission, or they are asked to leave when a disability becomes apparent. This is unacceptable in Vermont and to the extent, the proposed rules level the educational playing field for all students, they should be adopted.