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Memo

To: Vermont Senate Committee on Education

Sen. Philip Baruth, Chair

Sen. Becca Balint, Vice Chair

Sen. Kevin Mullin

Sen. Joe Benning

Sen. Christopher Bray

Sen. Debbie Ingram, Clerk

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Subject: Special Education

In recognition of the recent debates around Rule 2200, we ask the committee to consider not only what schools should be obligated to do legally but what Vermont could be doing to better its educational system to beat the national standards it currently falls behind. Regardless of what is decided around the rule, special education is up for debate on a federal level and should be widely revamped in Vermont. This testimony will focus on the future of special education in the federal government and Vermont, rather than Rule 2200 which as we understand is partially out of the committee's control.

IDEA:

The Individuals with Disabilities Education Act (IDEA) was first put in place in 1975 and requires public schools to provide a free appropriate public education (FAPE), defined as an education "provided at the public's expense, under public supervision and direction, and without charge." It also requires that special education students are taught in the least restrictive environment, that students must be evaluated appropriately, and that students must be on Individualized Education Programs (IEPs) that provide some educational benefit.

Andrew F. v. Douglas County School District:

The Supreme Court of the United States is currently hearing a case pertaining to the meaning of "some" benefit. This has been left to the states except for in the 1982 case *Board of Education v. Rowley* during which the Supreme Court decided that just above trivial progress, not meaningful progress as some states interpret it, was all that IDEA required. US circuit courts have issued different rulings. The current case, which has already presented oral testimony and therefore will be voted on by only eight judges regardless of future confirmations, looks to overrule the 1982 case by enforcing a standard of meaningful progress in the education of students on IEPs.

Vermont's Series 2360 Special Education Rules do not use any indicator besides the word "benefit" to communicate the standard for Special Education. If *Andrew F.* wins his case, some sort of practice specifying mandatory meaningful education will have to be considered. Ten amicus curiae briefs, including one from Democratic members of Congress and one representing the US government in the form of the Solicitor General's office, have been filed on the side of *Andrew F.* while three have been filed on the side of the school board, so it is likely that the prosecutor will win.

Vermont and Special Education:

Vermont has consistently been ranked as a state that needs assistance in implementing Part B (services for school aged children) of IDEA by the US Department of Education. The 2016 State Special Education profile found that the state has 2.7% more special education students than the national average (13.1%), indicating a need for a strong educational system. However, in the past year between 12.7 and 14 percent of students on IEPs had no increase in socio-emotional skills, appropriate behavior use, or knowledge acquisition. Furthermore, appropriate behavior use was the only category in which a majority of students with disabilities were able to function within age expectations and the State Performance Plan from 2014 found that under 23% of reading assessments and 18% of math assessments of students on IEPs were at a proficient level.

Possible Funding Solutions:

Given the very likely future that Vermont will be held to a higher standard, practices must be changed. The Education Commission of the States reported that the funding from IDEA dropped from covering 33% of costs in 2008 to 16% in 2014. Despite this, funding might be one way Vermont could modernize its special education programs. Vermont is one of only 5 states that uses reimbursement funding, likely for the benefit of transparency and the ability to track funds closely. Two of the other states that use reimbursement meet DoE standards. However, Vermont reimburses 60 percent of the statewide average salaries for special education teaching positions and administrators, which is notably different from the two successful reimbursement states, which reimburse 57% (MI) and 100% (WY) of all expenditures. This unusual distribution of funds takes away the benefit of targeted and accountable spending, and should be reconsidered. The three states in New England that were given sufficient ratings do not use this way of funding at all - Massachusetts uses categorical funding, while Rhode Island and Connecticut use formula funding. Therefore, Vermont is a clear outlier in the region and country.

Possible Policy Solutions:

Secondary Transitions:

Secondary transition planning, which begins when students are in their early teens with the goal of moving them through high school and into postsecondary education or employment, is one of the areas likely to be affected by the ruling in *Andrew F.* as it deals with the progression and

development of students on IEPs. Secondary transitions are Indicator 13 in the DoE's evaluation of states, and in comparison with the closest and most similar passing-grade state, Massachusetts, Vermont clearly falls behind at this task.

It should be noted that since 2011, Vermont's percentage of students on IEPs graduating with normal diplomas has increased and is above Massachusetts's numbers. However, the Office of Special Education Programs (OSEP) specified Indicator 13 as a failure in its 2011 and 2014 evaluations of Vermont. This will likely be a point of criticism if the Supreme Court rules in favor of advancing IDEA. Indicator 13 measures the "percent of youth with IEPs aged 16 and above with an IEP that includes appropriate measurable postsecondary goals that are annually updated and based upon an age appropriate transition assessment, transition services, including courses of study, that will reasonably enable the student to meet those postsecondary goals," as well as the percent of youth who were included in said planning. In 2009, Vermont was at below 23% compliance, and while this has improved to just over 74% since, the passing standard that Massachusetts has consistently met is 100%. Vermont received a five-year State Professional Development Grant in 2014 with improvements in secondary transition as one of the goals, but numbers did not rise that year and there has yet to be new policy. As Vermont statute currently reads, the only specifications besides the obligation to create the plans are that plans be "designed within a results-oriented process that is focused on improving the academic and functional achievement of the child to facilitate the child's movement from school to post-school activities" and that the plan takes the student's interests into account.

Taken directly from Massachusetts policy, specifications that would raise success rates and demonstrate a meaningful benefit include:

- The creation of an online secondary transition forum and resource sharing site
- Secondary transition presentations at statewide conferences for parents and professionals
- New guidance for Indicator 13 data collection
- Statewide training on promoting student self-determination for district professionals
- Grant funding to promote student self-determination
- Participation in statewide planning from the Office of Education and advisory councils
- Participation in inclusive employment efforts throughout the state
- The creation of a new online IEP for students of transition age

With these efforts taken up in the legislature, Vermont will have a better chance of raising its secondary transition compliance rates so that it may no longer need federal oversight.

Parent Involvement:

A successful IEP relies on a functional IEP team, which requires the partnership of the school and the parents or guardians of the child. Indicator 8, which stipulates the "percent of parents

with a child receiving special education services who report that schools facilitated parent involvement as a means of improving services and results for children with disabilities” showed that only 37% of parents in Vermont reported satisfactory school facilitation. In comparison, Massachusetts’ latest assessment displayed that 79.7% of parents reported satisfactory school facilitation. Massachusetts’ Parent Advisory Council promotes dialogue between parents and school officials, allowing parents to have direct input into school districts’ special education programs. This council is successful because it is so strongly supported by the districts, and Vermont may want to adopt similar measures.

A school’s ability to promote active parent participation is not only legally mandated, but essential to the child’s educational growth. A study conducted in 2008, originally published *Preventing School Failure* and later published by CADRE (Center for Appropriate Dispute Resolution in Special Education), investigated parents’ experiences in team meetings. The study suggested that even small changes to the school’s approach to involving parents would help in the parents’ overall understanding of the IEP process and the child’s development. A “welcoming atmosphere” and a professional’s use of common language in place of jargon allows the parents more comfort in the process. Learning about IEPs can be confusing for families and clarity is essential. Vermont rules outline the school’s duty to notify the parents of an IEP meeting “early enough that they [the parents] will have an opportunity to attend,” but parents would also benefit from receiving “sufficient time for the meetings” as well as receiving a copy of the IEP objectives beforehand in order to prepare for the meeting. Parents also found that professionals waiting to complete IEP forms for the parents’ involvement and input was meaningful for parents as it increased the parents’ feeling of inclusion and agency. The more transparency that a school demonstrates, the easier it is for parents to participate in their child’s education, and this will hopefully lead to better results for the students.

Sources:

[Summary of the SCOTUS case](#)

[Map of the US Showing 2011 Scores](#)

[VT Assessment 2011](#)

[VT Plan 2014](#)

[VT Profile 2016](#)

[VT Profile #2 2016](#)

[MA Plan 2014](#)

[MA Profile 2016](#)

[Special Education Rules in VT](#)

[Funding Types by State](#)