

To: Vermont State Board of Education, Rules 1300 & 2360 Committee
From: Vermont Council of Special Education Administrators (VCSEA)
Date: December 8, 2020
Re: Response to Questions from SBE Rules 1300 & 2360 Committee

VCSEA continues to be engaged with the rulemaking process for the SBE Rules 1300/2360 Series. We are pleased the SBE has created a subcommittee that would look more closely at the various public comments, and appreciate this opportunity to provide input to that committee. The questions raised by the subcommittee, as well as our ongoing review of public comments to date (including those of the Special Education Advisory Panel) and our own organization's input via survey and meetings, has prompted VCSEA to revise our position. The shifts reflected here are indicative of a thoughtful and inclusive process that sought to engage a broad representation of our membership, and the following comments reflect VCSEA's formal position on the issues raised.

Specifically, we offer our amended comments on the following points:

1. Adverse Effect in the context of special education eligibility,
2. The role of the discrepancy model in the identification of SLD,
3. Development of rules for implementation of MTSS.

Adverse Effect

On October 15, 2020, VCSEA offered the perspective that eliminating the construct of Adverse Effect in Vermont's Special Education Rule is not necessary in order to implement Act 173. And in fact, our concern was that the construct was necessary in order to have as much consistency as possible in the special education eligibility process across districts. While we maintain the belief that change is not *required* to implement Act 173, we do believe that adjustments to the construct of Adverse Effect could be made as described below. The following is offered as an amendment to those comments:

The Federal Rules do not require a demonstration of Adverse Effect for the categories of Deaf-Blindness or Specific Learning Disability. **VCSEA supports a Rule change that Adverse Effect only be applicable to those disabilities that require it in federal law.** We recommend that the Vermont process for determining Adverse Effect be maintained for the following disability categories: Autism Spectrum Disorder, Hearing Loss, Emotional Disturbance, Intellectual Disability, Multiple Disabilities, Orthopedic Impairment, Other Health Impairment, Speech or Language Impairment, Traumatic Brain Injury, and Visual Impairment. This change will further align Vermont's Special Education Rules and Regulations with the federal rules, an approach we believe is important and has guided our recommendations throughout this rule process..

However, VCSEA continues to believe that complete removal of the definition of Adverse Effect from the Vermont Rules will leave the decision of what is and is not Adverse Effect to individual teams and the LEA which could have the unintended consequences of inconsistent application across the state.

Discrepancy Model in the Determination of Specific Learning Disability (SLD)

VCSEA agrees with the Special Education Advisory Panel that **the discrepancy model of determining the presence of a Specific Learning Disability (SLD) is not in keeping with established best practices. We recommend that Vermont schools move to the implementation of a Response to Instruction (RtI) within a Multi-Tiered System of Support (MTSS) Framework to determine eligibility for SLD.**

We believe that in order to solidify this shift across the state, the Agency will need to take a more prominent role in developing guidance for implementation. It is VCSEA's understanding that the Agency already has draft guidance specific to the issue of SLD identification using an RtI/MTSS model, and that the guidance is aligned with the Vermont MTSS Field Guide. We would respectfully recommend that the Agency move that work forward in support of districts.

Development of Rules for Implementation of MTSS

While VCSEA is highly supportive of high quality implementation of MTSS and agree that this high quality implementation is necessary to shift from a discrepancy model to a model of determining SLD through RtI, we also firmly believe that MTSS is a function of general education. It is critical that MTSS is not written into rule as a part of the 2360 series. Doing so would falsely suggest that MTSS is a pathway to eligibility for special education, rather than a structure designed to ensure that general education meets the needs of all learners. In addition, VCSEA has reservations about the inclusion of Rules governing MTSS because the nature of a high quality MTSS requires flexibility in implementation. Overly rigid rules can have the negative effect of prompting a poorly implemented system. **VCSEA does not support the inclusion of MTSS rules as part of the 2360 series.**

Please don't hesitate to contact us if you have additional questions.

Sincerely,

Andrea Wasson, Chair
VCSEA Rules and Regulations Committee and
President-Elect

Mary Lundeen
President

Meagan Roy
Past-President

Cc: Traci Sawyers, VCSEA Executive Director