

**TESTIMONY PROVIDED TO:** House Education Committee  
**FROM:** Meagan Roy, Ed.D. (Chair, Census-Based Funding Advisory Group)  
**TOPIC:** Act 173 Update  
**DATE:** October 27, 2021

The Census-Based Funding Advisory Group convened for the first time this year on October 4th, 2021. Our discussions centered around identifying the core work of the Group for the 21-22 school year, as Vermont approaches the implementation date of Act 173. The following is a summary of the major issues the Group identified in its meeting (and by extension, the most pressing issues facing LEAs regarding implementation).

**Implementation of Rule Changes (Series 2360 and 1300)**

The House Education Committee will recall that last year’s work centered around the finalization of the 2360 and 1300 Series Rules (special education and finance) and the beginning of the process for the 2200 Series (independent schools). After an extended period of public comment, the 2360 and 1300 Rule Series stand to go into effect on July 1, 2022. Those rules include several significant changes, with the most impactful of those changes related to special education definitions and eligibility requirements:

	<b>Specific Learning Disability Identification</b>	<b>Adverse Effect</b>	<b>Definition of Special Education</b>
<b>The Change</b>	Changed how teams identify students with SLD, requiring them to look at how students respond to quality intervention rather than using a quantitative calculation	Definition of Adverse Effect in VT has been significantly changed and relies much more heavily on professional judgement	Updated the definition of special education to remove the qualifier <i>“that cannot be provided in a school’s typical system of supports for all students”</i>
<b>Implications</b>	LEA’s <u>must have</u> solidly implemented MTSS systems, including consistent data collection structures, because special education eligibility now relies on the existence of those structures	Special education professional development is required for the technical implementation of this change This change <u>may</u> result in increased special education identification rates	**We are seeking clarity on some confusion in the Rules on this issue**

The implications of these rule changes for LEAs are significant. In particular, the above outlined changes represent significant shifts in how special education teams determine eligibility for special education services. The shifts require deep professional learning on the part of special educators in order to implement the technical changes to the process, as well as deep, sustained professional development for entire systems on the implementation of MTSS. The Agency of Education has shared a timeline for when they will release additional guidance for LEAs; however, that timeline leaves very little time for LEAs to react to the guidance and then provide the significant professional development that will be necessary. This is an issue of significant concern to the Advisory Group.

**Readiness for Funding Change**

With the implementation date of July 1, 2022 comes the official shift away from a reimbursement model and toward a census-based funding model for state special education support. As LEAs enter the budget season for FY23, they are shifting the ways in which they would typically estimate revenue based on estimates shared by

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the Agency of Education. While the effective date has been clear for some time, the delay in implementation has made it difficult for LEAs to accurately estimate the impact of the funding shift. The original calculator developed by the Agency was released shortly after passage of the law in 2018; a new revenue estimate was provided to districts within the past two weeks.

### **Development of Time Documentation Procedures**

Of significant concern for the Census-Based Funding Advisory Group is the development of Cost Documentation procedures. Your committee may remember that concerns were raised during the Rulemaking process that existing Agency interpretations of time documentation requirements significantly exceeded those required by Federal law, and that continued implementation based on those interpretations would fail to meet one of the critical intents of Act 173: “To support the delivery of these services, the State funding model for special education[...]will provide more flexibility in how the funding can be used, is aligned with the State’s policy priorities of servicing students who require additional support[...]and will simplify administration.” The Advisory Group advocated heavily to ensure that the Agency would seek comment on the development of cost documentation procedures.

The Advisory Group shared their concerns again with the Agency at our recent meeting. The Group suggested a stakeholder process similar to the one used with the development of the 2200 Rule Series, allowing input and feedback to occur before the Agency drafts its guidance. The Agency agreed, and a stakeholder group made up of Advisory Group members will be working with the Agency finance team.

### **Professional Learning**

As noted above, the Agency has shared a timeline outlining how and when it will release professional development modules and guidance documents to support LEA implementation of the special education rules and associated MTSS implementation required in the law. While the Advisory Group commends the Agency on the selection of the topics and identification of critical implementation levers, we continue to be concerned at the magnitude of changes and the extremely short amount of time that LEAs will have for training and systems change based on the release date of the guidance. The shift in practice to implement the SLD eligibility changes alone is multi-year, multi-system work; yet the guidance outlining those changes will not be made available to LEAs until January 2022 - six short months from the implementation date.

The Advisory Group does acknowledge that some of the most significant changes that LEAs are wrestling with did not come as a result of Act 173 - they represent changes that came out of the public comment period during the opening of the 2360 Series rules. Notwithstanding, LEAs are still charged with the implementation of those changes alongside the systems change needed for full MTSS changes. **All this, in the ongoing context of COVID19 and critical staffing shortages.**

### **Rulemaking (2200 Series)**

The Advisory Group asked the Agency for an update on the 2200 Series rulemaking process; Emily Simmons shared the following:

There have been three public hearings so far on the draft Rule Series 2200. The last public hearing is on Tuesday, October 25 at 7 PM. Full details and text of the draft rule are located on the [rulemaking page](#).

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Written public comment will be accepted until November 5 and can be submitted to [SBE.PublicComment@vermont.gov](mailto:SBE.PublicComment@vermont.gov). Following public comment the SBE will work to evaluate the comments received and decide which elements of the rule will be amended in response to comments.