



1. TITLE OF RULE FILING:

**Special Education Finance and Census-Based Funding**

2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE

20P-011

3. ADOPTING AGENCY:

State Board of Education

4. PRIMARY CONTACT PERSON:

*(A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE).*

Name: Emily Simmons

Agency: Education

Mailing Address: 1 National Life Dr., Davis 5, Montpelier,  
VT 05602-2501

Telephone: 802 828 - 1518 Fax: 802 828 - 6430

E-Mail: emily.simmons@vermont.gov

Web URL *(WHERE THE RULE WILL BE POSTED)*:

<https://education.vermont.gov/state-board-councils/state-board/rulemaking>

5. SECONDARY CONTACT PERSON:

*(A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON).*

Name: Judy Cutler

Agency: Education

Mailing Address: 1 National Life Dr., Davis 5, Montpelier,  
VT 05602-2501

Telephone: 802 828 - 0079 Fax: 802 828 - 6430

E-Mail: judy.cutler@vermont.gov

6. RECORDS EXEMPTION INCLUDED WITHIN RULE:

*(DOES THE RULE CONTAIN ANY PROVISION DESIGNATING INFORMATION AS CONFIDENTIAL; LIMITING ITS PUBLIC RELEASE; OR OTHERWISE EXEMPTING IT FROM INSPECTION AND COPYING?)* No

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

Not applicable

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

Not applicable

7. LEGAL AUTHORITY / ENABLING LEGISLATION:

*(THE SPECIFIC STATUTORY OR LEGAL CITATION FROM SESSION LAW INDICATING WHO THE ADOPTING ENTITY IS AND THUS WHO THE SIGNATORY SHOULD BE. THIS SHOULD BE A SPECIFIC CITATION NOT A CHAPTER CITATION).*

2018 Acts and Resolves No. 173, section 16, as amended by 2019 Acts and Resolves No. 72, section E.502.1 (directs the AOE to recommend rules to the SBE necessary to implement the Act).

8. EXPLANATION OF HOW THE RULE IS WITHIN THE AUTHORITY OF THE AGENCY:

The purpose of these rules is to conform with the requirements of Act 173 of 2018, section 16, in which the General Assembly directs the Agency of Education (AOE) to recommend to the State Board of Education (SBE) proposed rules necessary to implement Act 173. The law specifically requires rules that establish processes for reporting, monitoring, and evaluation designed to ensure: (1) the achievement of the goals under the Act of enhancing the effectiveness, availability, and equity of services provided to all students who require additional support in Vermont's school districts; and (2) that supervisory unions are complying with the Individuals with Disabilities Education Act (IDEA).

9. THE FILING HAS NOT CHANGED SINCE THE FILING OF THE PROPOSED RULE.

10. THE AGENCY HAS NOT INCLUDED WITH THIS FILING A LETTER EXPLAINING IN DETAIL WHAT CHANGES WERE MADE, CITING CHAPTER AND SECTION WHERE APPLICABLE.

11. SUBSTANTIAL ARGUMENTS AND CONSIDERATIONS WERE NOT RAISED FOR OR AGAINST THE ORIGINAL PROPOSAL.

12. THE AGENCY HAS INCLUDED COPIES OF ALL WRITTEN SUBMISSIONS AND SYNOPSES OF ORAL COMMENTS RECEIVED.

13. THE AGENCY HAS NOT INCLUDED A LETTER EXPLAINING IN DETAIL THE REASONS FOR THE AGENCY'S DECISION TO REJECT OR ADOPT THEM.

14. CONCISE SUMMARY (150 WORDS OR LESS):

Act 173 of 2018 shifts the funding mechanism of special education from a reimbursement system to a block grant system by 2025. The new model aims to simplify

**Final Proposed Coversheet**

administration of funds at both state and local levels, and align with policy priorities around special education service delivery. These rules establish administrative requirements necessary to shift state special education funding from a reimbursement to a census-based structure; guide the use of special education funds consistent with state and federal requirements; prioritize the special education entitlement conferred by IDEA; establish a special education fiscal monitoring process; and outline an evaluation process designed to assess the achievement of the goals of Act 173.

These rules are written with an effective date of July 1, 2022.

**15. EXPLANATION OF WHY THE RULE IS NECESSARY:**

It is required by Act 173 (2018), Section 16.

**16. EXPLANATION OF HOW THE RULE IS NOT ARBITRARY:**

This rulemaking is being done at the specific direction of the General Assembly.

**17. LIST OF PEOPLE, ENTERPRISES AND GOVERNMENT ENTITIES AFFECTED BY THIS RULE:**

Supervisory Unions (SUs)/School Districts (SDs); school staff; parents; children with disabilities or children being evaluated for disabilities; advocacy groups; and the Agency of Education (AOE).

**18. BRIEF SUMMARY OF ECONOMIC IMPACT (150 WORDS OR LESS):**

These rules effectuate the shift in funding directed by Act 173, which may have significant impacts on individual SUs/SDs. On a statewide level, however, the Act is structured to contain special education costs and to be cost-neutral to the state.

**19. A HEARING WAS HELD.**

**20. HEARING INFORMATION**

(THE FIRST HEARING SHALL BE NO SOONER THAN 30 DAYS FOLLOWING THE POSTING OF NOTICES ONLINE).

IF THIS FORM IS INSUFFICIENT TO LIST THE INFORMATION FOR EACH HEARING PLEASE ATTACH A SEPARATE SHEET TO COMPLETE THE HEARING INFORMATION.

Date: 4/22/2020

Final Proposed Coversheet

Time: 04:00 PM

Street Address: Virtually via Microsoft Teams

Zip Code:

Date: 5/6/2020

Time: 04:00 PM

Street Address: Virtually via Microsoft Teams

Zip Code:

Date: 5/20/2020

Time: 04:00 PM

Street Address: Virtually via Microsoft Teams

Zip Code:

Date: 10/21/2020

Time: 02:00 PM

Street Address: Virtually via Microsoft Teams

Zip Code:

21. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING):

12/31/2020

KEYWORDS (PLEASE PROVIDE AT LEAST 3 KEYWORDS OR PHRASES TO AID IN THE SEARCHABILITY OF THE RULE NOTICE ONLINE).

Special education

Act 173

census-based funding

IDEA

Free appropriate public education

FAPE



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State of Vermont  
1 National Life Drive, Davis 5  
Montpelier, VT 05620-2501  
[education.vermont.gov](http://education.vermont.gov)

[phone] 802-828-1130  
[fax] 802-828-6430

*State Board of Education*

April 7, 2021

Legislative Committee on Administrative Rules  
c/o Charlene Dindo

RE: Final Proposed Rules 1300 and Rules 2360

Dear Members of the Legislative Committee on Administrative Rules,

The Legislative Committee on Administrative Rules' 4 February decision to extend the State Board of Education's time to file Rules 1300 and 2360 was helpful in allowing more input from stakeholders, parents, and students to further improve the State Board's final proposed Rules 1300 and 2360.

Following the close of the public comment period at the end of 2020, the Board appointed a subcommittee of Board members to meet in open, warned meetings with stakeholders who represented schools, LEAs, families of students with disabilities, and the State. There were no suggestions offered with regard to Rule 1300, but there were many improvements advocated for Rule 2360. Through many meetings, all the interested parties were able to come to consensus on needed improvements to the original revisions of Rule 2360. These consensus improvements have been incorporated into the final proposed Rule 2360, the most important of which are described in detail below.

### **Rule 2362 Eligibility for Children Ages Six Years Through Twenty-One**

Several changes were made to Rule 2362 to address ways the original proposal (in this case, the underlying rule) was overly rigid and caused students to be found not eligible for special education services on a technical or formulaic basis, rather than the well-informed judgement of qualified special educators. The comments also identified that federal law is more flexible than the original proposal with regard to the identification process for two categories of disability, Deaf-Blindness and Specific Learning Disability. Finally, the comments requested that a new area, Functional Skills, be added to the basic skills areas, which are important criteria that a student's IEP team must assess for impacts caused by the student's disability.

In response to these comments, Rule 2362 was amended in the following ways:

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1. The final proposal removes the categories of Deaf-Blindness and Specific Learning Disability from the categories that must be evaluated under the adverse-effect rule. (Rule 2362(a)(2)).
2. The final proposal substantially amends the definition of “adverse effect.” In summary, the final proposal’s definition relies more on the professional judgement of special educators and allows for multiple methods of documenting an adverse effect. (Rule 2362(d)).
3. The final proposal adds a new skill to the basic skills area. (Rule 2362(g)(1)(ix). Functional Skills are defined as the acquisition of essential and critical skills needed for children with disabilities to learn specific daily living, personal, social, and employment skills, or the skills needed to increase performance and independence at work, in school, in the home, in the community, for leisure time, and for post- secondary and other life-long opportunities. (Rule 2362(g)(4)).
4. The final proposal updates the underlying rule to comply with a change in federal regulation. An evaluation for specific learning disability may no longer rely on what is called a “discrepancy model.” The rule is updated to reflect federal regulation, which allows two models, one based on whether the student responds to scientific, research-based interventions (the RTI approach) or one based on other, alternative research-based procedures for determining whether the child has a specific learning disability. (Rule 2362.2.5(a)).
5. The final proposal makes a conforming amendment to reflect the change also made in number 1, above, regarding adverse effect. (Rule 2362.2.5(a)(1)).

### **Rule 2363.7 Content of IEP**

Almost all of the comments opposed to one or more provisions of the original proposal made a request for additional parent input to be represented in a student’s written individualized education program (IEP). In response, the final proposal includes the following new language in Rule 2363.7(j):

(j) Parent Input. The IEP shall contain a section for parents to provide written comments regarding their child’s IEP. Following an IEP meeting to write or amend an IEP, the LEA shall send the IEP to the parent together with prior written notice of decision. The parent shall be provided 10 days to complete and return the parent input section of the IEP. The purpose of the parent input section is to facilitate feedback from families to ensure they have an opportunity to express any opinions about the IEP or the IEP process. Upon receipt of the parent input, the LEA may, but is not required to, schedule a meeting to discuss parental concerns.

All of these changes and associated language were vetted and supported by stakeholders and attorneys representing the Agency of Education, the Vermont Council of Special Education Administrators, and the Vermont Disability Law Project before they were presented to the State Board’s subcommittee on Rule 2360 and 1300, and then finally adopted by the full State Board of Education.



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We look forward to presenting the State Board's final proposed Rule Series 1300 and Rule Series 2360 to the Legislative Committee on Administrative Rules. At that time, we will be available to address any questions or concerns you may have about the Board's process and/or the substance of the final proposed Rules.

Sincerely,

/s/ John Carroll

John Carroll  
Chair, State Board of Education





# Administrative Procedures – Adopting Page

## **Instructions:**

This form must accompany each filing made during the rulemaking process:

Note: To satisfy the requirement for an annotated text, an agency must submit the entire rule in annotated form with proposed and final proposed filings. Filing an annotated paragraph or page of a larger rule is not sufficient. Annotation must clearly show the changes to the rule.

When possible, the agency shall file the annotated text, using the appropriate page or pages from the Code of Vermont Rules as a basis for the annotated version. New rules need not be accompanied by an annotated text.

1. TITLE OF RULE FILING:

**Special Education Finance and Census-Based Funding**

2. ADOPTING AGENCY:

State Board of Education

3. TYPE OF FILING (*PLEASE CHOOSE THE TYPE OF FILING FROM THE DROPDOWN MENU BASED ON THE DEFINITIONS PROVIDED BELOW*):

- **AMENDMENT** - Any change to an already existing rule, even if it is a complete rewrite of the rule, it is considered an amendment as long as the rule is replaced with other text.
- **NEW RULE** - A rule that did not previously exist even under a different name.
- **REPEAL** - The removal of a rule in its entirety, without replacing it with other text.

This filing is **A NEW RULE** .

4. LAST ADOPTED (*PLEASE PROVIDE THE SOS LOG#, TITLE AND EFFECTIVE DATE OF THE LAST ADOPTION FOR THE EXISTING RULE*):

Not applicable



**State of Vermont**  
**Agency of Administration**  
109 State Street  
Montpelier, VT 05609-0201  
[www.aoa.vermont.gov](http://www.aoa.vermont.gov)

[phone] 802-828-3322  
[fax] 802-828-3320

*Office of the Secretary*

## **INTERAGENCY COMMITTEE ON ADMINISTRATIVE RULES (ICAR) MINUTES**

**Meeting Date/Location:** March 9, 2020, Pavilion Building, 4<sup>th</sup> floor conference room, 109 State Street, Montpelier, VT 05609

**Members Present:** Dirk Anderson (serving as Chair), Diane Bothfeld, John Kessler, Matt Langham, Clare O'Shaughnessy, and Shayla Livingston and Jennifer Mojo via phone

**Members Absent:** Chair Brad Ferland, Ashley Berliner, and Steve Knudson

**Minutes By:** Melissa Mazza-Paquette

- 2:00 p.m. meeting called to order, welcome and introductions.
- Review and approval of minutes from the February 10, 2020 meeting.
- No additions/deletions to agenda. Agenda approved as drafted.
- No public comments made.
- Presentation of Proposed Rules on pages 2-5 to follow.
  1. VOSHA Rule: Section 29 CFR 1904.41 Electronic submission of injury and illness records to OSHA, Department of Labor, page 2
  2. Underground Storage Tank (UST) Rules, Agency of Natural Resources, Department of Environmental Conservation, page 3
  3. Special Education Finance and Census-Based Funding, Vermont State Board of Education, page 4
  4. Special Education Rules, Part B (Ages 3-22) and C (Birth to Age 3), Vermont State Board of Education, page 5
- Next scheduled meeting is April 13, 2020 at 2:00 p.m.
- 2:38 p.m. meeting adjourned.



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**Proposed Rule: Special Education Finance and Census-Based Funding, Vermont State Board of Education**  
**Presented by John Carroll, Emily Simmons and Judy Cutler**

Motion made to accept the rule by John Kessler, seconded by Diane Bothfeld, and passed unanimously except for Clare O'Shaughnessy who abstained, with the following recommendations:

1. Economic Impact Analysis, page 4, #9: Attach budget tool.

DRAFT

# Administrative Procedures – Economic Impact Analysis

## **Instructions:**

In completing the economic impact analysis, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule; estimates the costs and benefits for each category of people enterprises and government entities affected by the rule; compares alternatives to adopting the rule; and explains their analysis concluding that rulemaking is the most appropriate method of achieving the regulatory purpose.

Rules affecting or regulating schools or school districts must include cost implications to local school districts and taxpayers in the impact statement, a clear statement of associated costs, and consideration of alternatives to the rule to reduce or ameliorate costs to local school districts while still achieving the objectives of the rule (see 3 V.S.A. § 832b for details).

Rules affecting small businesses (excluding impacts incidental to the purchase and payment of goods and services by the State or an agency thereof), must include ways that a business can reduce the cost or burden of compliance or an explanation of why the agency determines that such evaluation isn't appropriate, and an evaluation of creative, innovative or flexible methods of compliance that would not significantly impair the effectiveness of the rule or increase the risk to the health, safety, or welfare of the public or those affected by the rule.

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### 1. TITLE OF RULE FILING:

**Special Education Finance and Census-Based Funding**

### 2. ADOPTING AGENCY:

State Board of Education

### 3. CATEGORY OF AFFECTED PARTIES:

*LIST CATEGORIES OF PEOPLE, ENTERPRISES, AND GOVERNMENTAL ENTITIES POTENTIALLY AFFECTED BY THE ADOPTION OF THIS RULE AND THE ESTIMATED COSTS AND BENEFITS ANTICIPATED:*

SUs/SDs; school staff; parents; children with disabilities or children being evaluated for disabilities; advocacy groups; and the Agency of Education.

### 4. IMPACT ON SCHOOLS:

## Economic Impact Analysis

*INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON PUBLIC EDUCATION, PUBLIC SCHOOLS, LOCAL SCHOOL DISTRICTS AND/OR TAXPAYERS CLEARLY STATING ANY ASSOCIATED COSTS:*

Act 173 of 2018 shifts the funding mechanism of special education from a reimbursement system to a block grant system, to be fully implemented by 2025. The new model aims to simplify administration of funds at both state and local levels, and align with policy priorities around special education service delivery. The Act is designed to contain the costs of special education services in the State over time. To the extent these rules have an economic impact on individual SUs/SDs, that impact is secondary to those of the Act itself. These rules establish administrative requirements necessary to make the shift in state special education funding from a reimbursement to a census-based structure. The statewide impact of Act 173 is designed to be cost neutral to the State; the General Assembly's appropriation for the first, base, year of block grant funding is calculated from a three-year average of SU/SD spending on special education. For a given SU/SD, its three-year average spending on special education is then divided by its long-term average daily membership (ADM), resulting in a per-pupil block grant. Different SU/SDs will be impacted differently, based on their spending decisions combined with their long-term ADM. Compared to the current funding system, SU/SDs with relatively low special education costs and a relatively high long-term ADM count will likely receive more funding. Conversely, SUs with relatively high special education costs and low long-term ADM will likely receive less funding. As stated above, the proposed rule's economic impacts are secondary to implementing the funding shift mandated by Act 173. The rules do not affect which SU/SDs will receive more or less funding. The Act was passed following study report recommendations to the General Assembly advising that new practices in basic instruction as well as in special education services would be less expensive without sacrificing the quality of special education services provided to eligible children. The proposed rule eliminates several current restrictions on the use

## Economic Impact Analysis

of funding for special education, making these new practices feasible for SU/SDs to adopt. As SU/SDs adapt to the new funding construct, they will incur transition costs for professional development, and costs for updating accounting practices. These costs are speculative and cannot be calculated at this time, because the cost to each SU/SD will be determined by its unique circumstances and decisions.

5. **ALTERNATIVES:** *CONSIDERATION OF ALTERNATIVES TO THE RULE TO REDUCE OR AMELIORATE COSTS TO LOCAL SCHOOL DISTRICTS WHILE STILL ACHIEVING THE OBJECTIVE OF THE RULE.*

As this rulemaking has been undertaken at the direction of the General Assembly, no alternatives were considered.

6. **IMPACT ON SMALL BUSINESSES:**

*INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON SMALL BUSINESSES (EXCLUDING IMPACTS INCIDENTAL TO THE PURCHASE AND PAYMENT OF GOODS AND SERVICES BY THE STATE OR AN AGENCY THEREOF):*

Impact on small businesses, specifically independent schools, is unknown. It will be up to individual SU/SDs to determine how they will restructure their special education programs in implementing the changes directed by Act 173. It is speculative to quantify how a particular SU/SD may choose to use its funding. These rules do not regulate small businesses.

7. **SMALL BUSINESS COMPLIANCE:** *EXPLAIN WAYS A BUSINESS CAN REDUCE THE COST/BURDEN OF COMPLIANCE OR AN EXPLANATION OF WHY THE AGENCY DETERMINES THAT SUCH EVALUATION ISN'T APPROPRIATE.*

Not applicable

8. **COMPARISON:**

*COMPARE THE IMPACT OF THE RULE WITH THE ECONOMIC IMPACT OF OTHER ALTERNATIVES TO THE RULE, INCLUDING NO RULE ON THE SUBJECT OR A RULE HAVING SEPARATE REQUIREMENTS FOR SMALL BUSINESS:*

Not applicable

9. **SUFFICIENCY:** *EXPLAIN THE SUFFICIENCY OF THIS ECONOMIC IMPACT ANALYSIS.*

See attached budget tool for the best analysis available for economic impact on individual SU/SDs.



# Administrative Procedures – Environmental Impact Analysis

## **Instructions:**

In completing the environmental impact analysis, an agency analyzes and evaluates the anticipated environmental impacts (positive or negative) to be expected from adoption of the rule; compares alternatives to adopting the rule; explains the sufficiency of the environmental impact analysis.

Examples of Environmental Impacts include but are not limited to:

- Impacts on the emission of greenhouse gases
- Impacts on the discharge of pollutants to water
- Impacts on the arability of land
- Impacts on the climate
- Impacts on the flow of water
- Impacts on recreation
- Or other environmental impacts

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### 1. TITLE OF RULE FILING:

**Special Education Finance and Census-Based Funding**

### 2. ADOPTING AGENCY:

State Board of Education

### 3. GREENHOUSE GAS: *EXPLAIN HOW THE RULE IMPACTS THE EMISSION OF GREENHOUSE GASES (E.G. TRANSPORTATION OF PEOPLE OR GOODS; BUILDING INFRASTRUCTURE; LAND USE AND DEVELOPMENT, WASTE GENERATION, ETC.):*

None

### 4. WATER: *EXPLAIN HOW THE RULE IMPACTS WATER (E.G. DISCHARGE / ELIMINATION OF POLLUTION INTO VERMONT WATERS, THE FLOW OF WATER IN THE STATE, WATER QUALITY ETC.):*

None

### 5. LAND: *EXPLAIN HOW THE RULE IMPACTS LAND (E.G. IMPACTS ON FORESTRY, AGRICULTURE ETC.):*

None

### 6. RECREATION: *EXPLAIN HOW THE RULE IMPACT RECREATION IN THE STATE:*

None

### 7. CLIMATE: *EXPLAIN HOW THE RULE IMPACTS THE CLIMATE IN THE STATE:*

None

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Environmental Impact Analysis

8. **OTHER:** *EXPLAIN HOW THE RULE IMPACT OTHER ASPECTS OF VERMONT'S ENVIRONMENT:*

None

9. **SUFFICIENCY:** *EXPLAIN THE SUFFICIENCY OF THIS ENVIRONMENTAL IMPACT ANALYSIS.*

Not applicable

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# Administrative Procedures – Public Input

## **Instructions:**

In completing the public input statement, an agency describes the strategy prescribed by ICAR to maximize public input, what it did do, or will do to comply with that plan to maximize the involvement of the public in the development of the rule.

This form must accompany each filing made during the rulemaking process:

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1. TITLE OF RULE FILING:

**Special Education Finance and Census-Based Funding**

2. ADOPTING AGENCY:

State Board of Education

3. PLEASE DESCRIBE THE STRATEGY PRESCRIBED BY ICAR TO MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE PROPOSED RULE:

The SBE and AOE will continue to involve stakeholders to seek input on the rule, post the rule on the AOE website with opportunity for public comment, and hold three (3) public hearings.

4. PLEASE LIST THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO COMPLY WITH THAT STRATEGY:

The SBE was advised by the AOE and the Census-Based Funding Advisory Group, which is a stakeholder group established by Act 173. Prior to proposing draft rules to the SBE, the AOE and the Census-Based Funding Advisory Group met monthly from September 2018-March 2019. During this time, the AOE also engaged other stakeholders via more informal conversations in seeking feedback on proposed rules. The SBE reviewed the proposed rules at its monthly meetings in November 2019, December 2019 and January 2020. The SBE provided opportunity for public comment and solicited specific comment from the Census-Based Funding Advisory Group at each of these meetings. The SBE has worked to develop a proposed rule that has the consensus of the education community prior to pre-filing. At the time the SBE pre-

## Public Input

filed these proposed rules with ICAR, it intended to hold three (3) public hearings to provide opportunities for public comment. Shortly after pre-filing, the COVID-19 pandemic significantly altered the SBE's method of conducting business. Instead of holding hearings in various geographic parts of Vermont as planned, the SBE held a total of six (6) public hearings virtually. In addition, in recognition of the upheaval to daily life and the Statewide shutdown of schools, the SBE requested an extension of the time period for public comment on these rules from 5/29/2020 to 12/31/2020, to ensure adequate time for parents and educators to engage in the public comment process.

### 5. BEYOND GENERAL ADVERTISEMENTS, PLEASE LIST THE PEOPLE AND ORGANIZATIONS THAT HAVE BEEN OR WILL BE INVOLVED IN THE DEVELOPMENT OF THE PROPOSED RULE:

Agency of Education

Census-Based Funding Advisory Group

Center for IDEA Fiscal Reporting

Council of Independent Schools

Federal Education Group

Susan Marks - Special education consultant

Vermont Association of School Business Officials

Vermont Coalition of Independent Schools

Vermont Council of Special Education Administrators

Vermont Department of Mental Health

Vermont Independent Schools Association

Vermont Legal Aid

Vermont National Education Association

Vermont Principals' Association

Vermont School Boards Association

Vermont Special Education Advisory Council

Vermont Superintendents Association

Various school business managers

Various school special education directors

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**Vermont State Board of Education**

**Administrative Procedures – Final Proposed Rule Filing**

**Title:** Special Education Finance and Census-Based Funding

**Proposed # Assigned by Secretary of State:** 20P-011

**Supplemental Page:** Complete list of Public Hearings Held

- 1) Date: 4/22/2020  
Time: 4:00 PM  
Location: Virtual Mtg. via Microsoft Teams
  
  - 2) Date: 5/6/2020  
Time: 4:00 PM  
Location: Virtual Mtg. via Microsoft Teams
  
  - 3) Date: 5/20/2020  
Time: 4:00 PM  
Location: Virtual Mtg. via Microsoft Teams
  
  - 4) Date: 10/21/2020  
Time: 2:00 PM  
Location: Virtual Mtg. via Microsoft Teams
  
  - 5) Date: 11/18/2020  
Time: 12:45 PM  
Location: Virtual Mtg. via Microsoft Teams
  
  - 6) Date: 12/16/2020  
Time: 2:00 PM  
Location: Virtual Mtg. via Microsoft Teams
-

Phase-in of SpEd Census Block Grant

**FY23-FY25 Base Amount Calculation**

Cells with blue backgrounds indicate that numbers will change when actuals are available.

FY20 State Appropriations in column F and FY22-FY25 Base Amounts in columns D-I have blue backgrounds.

State Appropriations	FY18	FY19	FY20
\$2961 (standard mainstream block grant)	\$ 33,079,717.00	\$ 31,848,426.20	\$ 32,615,958.00
\$2963 (special education expenditures reimbursement)	\$ 124,692,791.00	\$ 134,489,947.00	\$ 155,888,615.00
\$2963a (exceptional circumstances)	\$ -	\$ -	\$ -
	\$ 157,772,508.00	\$ 166,338,373.20	\$ 200,504,573.00

<b>Average Appropriation (\$2961, \$2963, &amp; \$2963a)</b>	\$ 174,871,818.07
<b>NIPA</b>	3.185%
<b>Ave Appropriation (\$2961, \$2963, &amp; \$2963a) Increased by NIPA</b>	\$ 180,441,485.47

<b>Statewide LTM</b>	86,481.09
<b>FY25 Uniform Base Amount</b>	\$ 2,086.48

Payee	SU	Name	FY22 Base Amount	Annual Increase or decrease	FY23 Base Amount	FY24 Base Amount	FY25 Base Amount
U061	S001	Mount Abraham Unified	\$1,703.59	\$127.63	\$1,831.22	\$1,958.85	\$2,086.48
U054	S002	Addison Northwest	\$2,328.11	-\$80.54	\$2,247.57	\$2,167.03	\$2,086.48
U055	S003	Addison Central	\$1,254.60	\$277.29	\$1,531.89	\$1,809.18	\$2,086.48
S004	S004	Addison Rutland	\$1,857.65	\$76.28	\$1,933.93	\$2,010.21	\$2,086.48
S005	S005	Southwest Vermont	\$2,076.95	\$3.18	\$2,080.13	\$2,083.31	\$2,086.48
S006	S006	Bennington Rutland	\$2,170.47	-\$28.00	\$2,142.47	\$2,114.47	\$2,086.48
T050	S007	Colchester	\$1,766.41	\$106.69	\$1,873.10	\$1,979.79	\$2,086.48
S009	S009	Caledonia Central	\$1,760.51	\$108.66	\$1,869.17	\$1,977.83	\$2,086.48
T126	S010	Milton	\$2,327.37	-\$80.30	\$2,247.07	\$2,166.77	\$2,086.48
T179	S011	St. Johnsbury	\$2,139.85	-\$17.79	\$2,122.06	\$2,104.27	\$2,086.48
S012	S012	Chittenden East	\$1,900.99	\$61.83	\$1,962.82	\$2,024.65	\$2,086.48
U015	S014	Champlain Valley	\$1,694.71	\$130.59	\$1,825.30	\$1,955.89	\$2,086.48
T037	S015	Burlington	\$2,040.42	\$15.35	\$2,055.77	\$2,071.12	\$2,086.48
T191	S016	South Burlington	\$1,844.92	\$80.52	\$1,925.44	\$2,005.96	\$2,086.48
T249	S017	Winooski	\$2,606.20	-\$173.24	\$2,432.96	\$2,259.72	\$2,086.48
S019	S019	Essex North	\$1,590.09	\$165.46	\$1,755.55	\$1,921.01	\$2,086.48
S020	S020	Franklin Northeast	\$1,691.12	\$131.79	\$1,822.91	\$1,954.70	\$2,086.48
S021	S021	Franklin Northwest	\$1,845.34	\$80.38	\$1,925.72	\$2,006.10	\$2,086.48
S022	S022	Franklin West	\$1,182.38	\$301.37	\$1,483.75	\$1,785.12	\$2,086.48
U057	S023	Maple Run Unified	\$2,052.17	\$11.44	\$2,063.61	\$2,075.05	\$2,086.48
S024	S024	Grand Isle	\$2,078.73	\$2.58	\$2,081.31	\$2,083.89	\$2,086.48
S025	S025	Lamoille Union	\$1,977.35	\$36.38	\$2,013.73	\$2,050.11	\$2,086.48
S026	S026	Lamoille South	\$1,686.10	\$133.46	\$1,819.56	\$1,953.02	\$2,086.48
S027	S027	Orange East	\$2,042.33	\$14.72	\$2,057.05	\$2,071.77	\$2,086.48
U059	S028	Orange Southwest Unified	\$1,480.68	\$201.93	\$1,682.61	\$1,884.54	\$2,086.48
S030	S030	White River Valley	\$1,865.45	\$73.68	\$1,939.13	\$2,012.81	\$2,086.48
S031	S031	North Country	\$2,287.82	-\$67.11	\$2,220.71	\$2,153.60	\$2,086.48
S032	S032	Washington Central	\$1,936.48	\$50.00	\$1,986.48	\$2,036.48	\$2,086.48
U052	S033	Mill River Unified	\$1,927.45	\$53.01	\$1,980.46	\$2,033.47	\$2,086.48
S034	S034	Orleans Central	\$2,107.14	-\$6.89	\$2,100.25	\$2,093.36	\$2,086.48
S035	S035	Orleans Southwest	\$2,255.41	-\$56.31	\$2,199.10	\$2,142.79	\$2,086.48
S036	S036	Rutland Northeast	\$1,980.80	\$35.23	\$2,016.03	\$2,051.26	\$2,086.48
T173	S040	Rutland City	\$2,405.69	-\$106.40	\$2,299.29	\$2,192.89	\$2,086.48
U060	S042	Harwood Unified	\$1,957.80	\$42.89	\$2,000.69	\$2,043.58	\$2,086.48
S046	S046	Windham Central	\$2,267.82	-\$60.45	\$2,207.37	\$2,146.92	\$2,086.48
S047	S047	Windham Northeast	\$2,638.56	-\$184.03	\$2,454.53	\$2,270.50	\$2,086.48
S048	S048	Windham Southeast	\$2,123.71	-\$12.41	\$2,111.30	\$2,098.89	\$2,086.48
S049	S049	Windham Southwest	\$2,091.73	-\$1.75	\$2,089.98	\$2,088.23	\$2,086.48
S051	S051	Windsor Central	\$1,884.02	\$67.49	\$1,951.51	\$2,019.00	\$2,086.48
S052	S052	Windsor Southeast	\$1,996.89	\$29.86	\$2,026.75	\$2,056.61	\$2,086.48
T093	S054	Hartford	\$2,460.37	-\$124.63	\$2,335.74	\$2,211.11	\$2,086.48
T145	S055	Norwich	\$1,449.02	\$212.49	\$1,661.51	\$1,874.00	\$2,086.48
T193	S056	Springfield	\$2,494.96	-\$136.16	\$2,358.80	\$2,222.64	\$2,086.48
S060	S060	Battenkill Valley	\$1,811.13	\$91.78	\$1,902.91	\$1,994.69	\$2,086.48
S061	S061	Barre	\$2,219.67	-\$44.40	\$2,175.27	\$2,130.87	\$2,086.48



Phase-in of SpEd Census Block Grant

**FY23-FY25 Base Amount Calculation**

Cells with blue backgrounds indicate that numbers will change when actuals are available.

FY20 State Appropriations in column F and FY22-FY25 Base Amounts in columns D-I have blue backgrounds.

**State Appropriations**

	<u>FY18</u>	<u>FY19</u>	<u>FY20</u>
\$2961 (standard mainstream block grant)	\$ 33,079,717.00	\$ 31,848,426.20	\$ 32,615,958.00
\$2963 (special education expenditures reimbursement)	\$ 124,692,791.00	\$ 134,489,947.00	\$ 155,888,615.00
\$2963a (exceptional circumstances)	\$ -	\$ -	\$ -
	\$ 157,772,508.00	\$ 166,338,373.20	\$ 200,504,573.00

**Average Appropriation (\$2961, \$2963, & \$2963a)**

\$ 174,871,818.07

**NIPA**

3.185%

**Ave Appropriation (\$2961, \$2963, & \$2963a) Increased by NIPA**

\$ 180,441,485.47

**Statewide LTM**

86,481.09

**FY25 Uniform Base Amount**

\$ 2,086.48

Payee	SU	Name	FY22 Base Amount	Annual Increase or decrease	FY23 Base Amount	FY24 Base Amount	FY25 Base Amount
S063	S063	Two Rivers	\$2,403.57	-\$105.70	\$2,297.87	\$2,192.17	\$2,086.48
U146	S064	Rivendell	\$1,692.88	\$131.20	\$1,824.08	\$1,955.28	\$2,086.48
U051	S065	Essex-Westford	\$2,125.59	-\$13.04	\$2,112.55	\$2,099.51	\$2,086.48
S066	S066	Greater Rutland County	\$1,564.57	\$173.97	\$1,738.54	\$1,912.51	\$2,086.48
U064	S067	Kingdom East Unified Unio	\$1,909.28	\$59.07	\$1,968.35	\$2,027.42	\$2,086.48
S068	S068	Central Vermont	\$2,066.42	\$6.69	\$2,073.11	\$2,079.80	\$2,086.48
U071	S069	Montpelier-Roxbury	\$1,635.14	\$150.45	\$1,785.59	\$1,936.04	\$2,086.48

<u>Date</u>	<u>Name</u>	<u>Town or Organization</u>	<u>Written Testimony?</u>	<u>Summary of Requested Rule Change</u>	<u>Tag to Rule Series</u>	<u>Clarifying Questions?</u>
4/22/2020	Karen Price	Vermont Family Network	Yes, to be emailed to SBE	Fully supports positions presented by Vermont Disability Law Project (DLP). Parental rights and parental consent issues. Prior written notice currently "a reasonable time," but VFN would like to see 14 day period. Add a process for parents to indicate they disagree in whole or in part with IEP. Place limit on re-evaluation timeframe to same as initial evaluations (60 days). Transition planning age should be 14. Adverse effect should be removed from eligibility criteria.	2360	Carroll: This is in support of the DLP proposal that was not adopted by the CBAG? (Karen: Yes).
4/22/2020	Philip Eller	Chair of Vermont Autism Taskforce, Special Education Advocates Coalition	Yes, sent via email	Supports DLP proposal. Adverse effect should be removed from eligibility criteria. Stakeholders have requested AOE to remove adverse effect since the enactment of IDEA. The adverse effect rule is not in compliance with IDEA. Other states, including NH, have a consent form that allows a parent to "agree" "agree partially" or "disagree" with the IEP. This approach gives parents meaningful input into the process and leads to better process for resolving differences.	2360	
4/22/2020	Greg VanBuiten	Milton	**wants to schedule for next session, May 6			
4/22/2020	Katie Ballard	Member of Decoding Dyslexia; Essex	Plans to present additional comments in May	Requesting extension of public comment period. As a parent of children with disabilities and an advocate for other parents, it is challenging for many parents to participate remotely in the public comment process for a number of reasons at this time, including lack of internet access. Also supports prior testimony (Price; Eller) advocating for the removal of the adverse effect portion of Vermont's eligibility rule.	2360	

5/6/2020 Greg VanBuiten

Attorney, practice  
representing parents  
of children with  
disabilities

Yes

This is the first time Mr. VanBuiten has seen Vermont special education rulemaking that did not involve a collaborative stakeholder process. AOE has not tried to sponsor a process like that. Has attended the CBFAG meetings, but there was never a conversation where the group looked at proposed language and solved problems. Agrees with changes to definition of "special education"; that "related services" definition should track federal law. The adverse effect gate should be removed. NH has just two gates. Rule 2362(g) - in order to be eligible, students must show adverse effect in basic skill area. All skill areas are academic, so they do not address functional skills. This should be added in accordance with new language in IDEA, added in 2004. Agrees fully w/ VLA draft on parental consent issue; in NH, the process makes parent feeling more clear. Fully supports VLA language on MTSS policy requirement. 5 day before IEP meetings parents should be provided all documents. Transition should be allowed at age 14. Item 9 - (partially missed) LEA should only choose if parent and independent school cannot agree. Item 10 based on NH charter school arrangement - services follow the student to the charter/independent school. Burden should not be placed just on the independent school to provide the service. Residential placements - see written testimony; 16 VSA 2958 states what the SBE policies need to include. When disagreement between AOE and Secretary disagree, the Secretary is to initiate a due process hearing. What AOE is proposing, the burden shifts to LEA.

2360

5/6/2020 Marilyn Mahusky

Vermont Legal Aid no

Echo what Greg said about participatory process in the past. The CBFAG did not discuss programmatic rules in detail. There should have been other stakeholder groups, plus many on the CBFAG who would have helped draft the proposed rule. Vermont's rules should mirror the federal rules as much as possible. In 2362.1 (definitions for disability categories) are not consistent with the federal definitions. Will add more detail when written comments are submitted. MTSS rule; DLP has not had an opportunity to ask the legislature to amend the statute, which requires policies and procedures. Rules are stronger than policies. VCSEA concurs with the proposed MTSS rule. Texas lost eligibility for IDEA as a result of problems with its MTSS system not having adequate monitoring procedures to ensure child find. Rule 2360.h, language should be added to say child find also applies to students receiving support under MTSS. (long discussion between Chair Carroll and Mahusky regarding MTSS being part of general education obligations of districts) Adverse effect - not required under federal law. A child could be found eligible in one district and not in another because of adverse effect element. Just because a child has a disability does not mean that the child needs special education. This really impacts kids with emotional disabilities and kids on the ASD spectrum. We have talked to parents whose children have been discriminated against in independent schools, so we are addressing the programmatic aspects of that. Parental access to information in time for IEP meetings. Parental consent to elements of IEPs allows a district to move forward with parts of IEP that are agreed upon, but continue to negotiate on others. 2364.3, Worked at the Agency back in 2000, when adverse effect was first operationalized. Prior to the inclusion of this language, the language in the IDEA (determine whether the disability has an adverse effect) was less impactful. Vermont took it and decided to operationalize, i.e. maybe not everyone needs to be in special education if it isn't affecting their ability to learn. It became clear early on that there were students who needed specialized instruction, but did not experience an adverse effect, or only partially met adverse effect. In 2004, we were asked to focus on present levels of achievement and functional performance. However, functional performance is not part of eligibility because of adverse effect rule. Eligibility rule should be changed to accomplish a consideration of functional performance.

2360

5/20/2020 Jana Osmond

The Stern Center no

5/20/2020 Rachel Seelig

Vermont State  
Advisory Panel on  
Special Education

yes

IDEA tasks us with providing public comment on proposed rules. 2360  
Even though the rules have been out there in their pre-comment form, our group has really started contemplating our comment since March of this year. I anticipate coming back with more comments later on, but here are four points. Definition of special education is a good change. That same concerning language, however, still shows up in other places in the rules. We do not agree with reference back. The rule should be repeated in each place. There are very specific definitions of each disability, but we do not have a lot of specific definition on "need" for special education. Also has language on continuing to be eligible for other tiers of MTSS. Need language about not delaying evaluation because of MTSS. We agree that there should be a separate rule series on MTSS. There is a thick field guide, but it does not have the force of law.

5/20/2020 Katie Ballard, Sandra  
Chittenden

Ballard - Parent of  
children with  
disabilities, advocate  
for families, Decoding  
Dyslexia/Chittenden-  
parent of children  
with disabilities,  
COPPA, VFN

No

Adverse effect is an issue for many parents in Vermont because it 2360  
requires a student to fail before a student can receive services. Interpreted and applied inconsistently. The rule does not allow for meeting adverse effect for social/emotional skills. Significant discrepancy is used for determining SLD, and should be eliminated. Add a definition of the term "dyslexia" to the rules. House Education committee attempted to address literacy this session. Review the rules around identification and include an annual screener for elementary grades. Emotional disturbance - Vermont has an inaccurate identification of SLD, which leads to higher rates of ED. The language of "emotional disturbance" is not ideal, and urge the board to adopt alternate language, such as "mental health impairment" that is not stigmatizing. Placement - review and update the language of placement due to challenges of least restrictive environment. Many parents feel that the rule around continuum of alternative placement are never followed. In Vermont, there is limited access to alternative placements, especially for SLD. Parent consent and participation rules need review, including more input from parents. We find ourselves struggling to participate as equal members in IEP team meetings. Change the language in the rules to enable parents, similar to NH rule. Other: IEP facilitation training and positions at AOE that parents can access free of cost, local parent teacher advisory councils, training for teachers, create a literacy task force for dyslexia best practices.

Carroll: In your written documentation, the more that you can point out language and suggest improvements to language, the better.

5/20/2020 Cynthia Gardner Morse	Literacy Tutor	Yes	Students are not identified until 3rd grade or later, which is not early enough. Reading is not intentionally taught in the later grades. Very few students are identified as SLD in K or 1st, 2nd grade. This is because we are not screening dyslexia in kindergarten or first grade. It should come under child find. The discrepancy model for eligibility is not appropriate. We should use RTI instead of the discrepancy model. The criteria are too restrictive. It only catches students in the lower 7%, but we know that 10%-12% of students have dyslexia. Also, adverse effect is known as the "wait to fail" model. Three of the six measures are subjective, and one problem with this is because so many students are not taught to read, the peer group is also behind on reading. Concerned about special education funds being given in block grants. To see special educators intentionally floated to assist non-special education students is concerning. We should not diffuse the attention of special services to students without disabilities.	2360, 1300	Carroll: Will you identify the place in the rules that address this request?
5/15/2020 Nicole Szigeti	Parent and special educator	Yes, written only	Describes moving to Vermont from Connecticut to obtain smaller and specialized instruction for her son. Her son was determined to not be eligible for special education in Vermont, because of the adverse effect gate. Asks for adverse effect to be eliminated.	2600	
5/20/2020 Traci Sawyers	Traci Sawyers, VCSEA	Yes, written only	Supports the current draft of the rules. Feels the amendment to the definition of special education is crucial to implementation of Act 173. Opposes elimination of adverse effect rule. Vermont's rules are in alignment with the federal rules on this issue. Functional performance is an express element to be included in evaluations. Opposes amendment of parental consent rule. Feels that the requested changes would delay delivery of services and constitute a denial of FAPE while awaiting parent signature. Similar provisions were included in the rules in the 1990s and were deemed ineffective. See written testimony for additional comments.	2360	



10/21/2020 Richard Smith	Associate Director of Special Service for North Country SU; VCSEA member	Oral	Supports 1300 and 2360 as proposed - developed over a year's work with the AOE, the Census-Based Funding Advisory Group and various stakeholders around the state and incorporates the FEG recommendations. Supports changing definition of "special education" to align with federal definition. Noted desire for rules to reflect flexibility of spending envisioned by Act 173. Does not feel that any additional changes to child find or adverse effect are required to implement Act 173. Does not agree with adding an Multi-tiered System of Supports (MTSS) within the special education rules as MTSS is a framework for general education and not special education. Disagrees that eliminating Vermont's definition of adverse effect is necessary to achieve implementation of Act 173.	2360
10/21/2020 Stacy Rice	Director of Special Services at Kingdom East	Oral	Urged the SBE to consider the UVM weighting study, particularly statics regarding poverty rates, when considering special education funding calculations. Having the money shared equally would not represent the students in poverty.	1300 and 2360
11/18/2020 No comments 11/25/2020 Crista Yagjian	Special Educator/Reading Specialist, member of the Vermont Special Education Advisory Panel, and parent	Oral	She spoke of her experience as a special educator, parent of a student accessing special education services, Advisory Panel member, and in support of removing the adverse effect third gate, considering the parent comment form and inclusive IEP practices, and referencing MTSS in rules.	2360
12/16/2020 Susan Aranoff	Policy Analyst for the Vermont Developmental Disabilities Council	Oral and written	Aranoff said that the areas the Council were most concerned about were adverse effect and parental consent. The way the State has been doing things was not working for a lot of people. The parents of students with disabilities need a process that they can participate in, understand and be able to say yes or no. Parental engagement is key. She asked the Board to please take public comment on parental consent and adverse effect seriously.	2360

12/16/2020 Crista Yagjian

Special Oral  
Educator/Reading  
Specialist, member of  
the Vermont Special  
Education Advisory  
Panel, and parent

Yagjian asked the Board to consider changing the rigid criteria for 2360  
adverse effect established by  
Yagjian asked the Board to consider changing the rigid criteria for  
adverse effect established by Vermont and to include social-  
emotional skills as part of the section and to consider allowing  
parents to give consent or partial consent to IEPs.

Clean  
Text

# State of Vermont



## Rules for Special Education Finance and Census-Based Funding



Effective July 1, 2022

**STATE OF VERMONT  
GOVERNOR**

Phil Scott

**VERMONT AGENCY OF EDUCATION  
SECRETARY**

Daniel M. French, Ed. D.

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2021**

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**VERMONT STATE BOARD OF EDUCATION**

**RULE SERIES 1300 - SPECIAL EDUCATION FINANCE AND CENSUS-BASED  
FUNDING**

**1301 STATUTORY AUTHORITY**

**Federal Statutory Authority:**

Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400 et seq.)

**State Statutory Authority in accordance with 3 V.S.A. Chapter 25:**

16 V.S.A. §164(7)

16 V.S.A. Chapter 101

**1302 STATEMENT OF PURPOSE**

In 2018, the Vermont General Assembly enacted Act 173 with the intent to enhance the effectiveness, availability, and equity of services provided to all students who require additional support in Vermont's school districts, and directed a shift to a census-based model of special education funding. The purposes of Act 173 are to: (1) enhance delivery of services, (2) shift the State from a reimbursement model to a census-based model, which will provide more flexibility in how the funding can be used, (3) align with the State's policy priorities of serving students who require additional support across the general and special education service-delivery systems, (4) facilitate exercise of entitlement to a free appropriate public education in the least restrictive environment appropriate for students eligible for an individual educational program under the IDEA and (5) simplify administration.

These rules are designed to:

- (a) guide implementation of a census-based model of funding for students who require additional support;
- (b) guide the provision of funds to supervisory unions and supervisory districts in a manner designed to enhance the effectiveness, availability, and equity of services provided to all students who require additional support, while ensuring the entitlement of eligible students with disabilities to a free appropriate public education in accordance with State and federal law; and
- (c) be implemented in a manner consistent with State and federal statutes, regulations, and guidelines.

### **1303 DEFINITIONS**

Any terms used in these rules not defined below shall be consistent with the definitions found in State Board of Education (SBE) Rule 2361.1. For purposes of these rules, the following definitions apply:

Essential Early Education (EEE): as defined in 16 V.S.A. § 2942. EEE may also be referred to as Early Childhood Special Education (ECSE).

Extraordinary Expenditures: means an LEA's allowable special education expenditures that for any one student in a fiscal year exceed the extraordinary cost threshold as calculated under 16 V.S.A. § 2962(a)(2).

Individualized Education Program (IEP): means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with SBE Rule 2363.

Local Education Agency (LEA): as that term is defined in 20 U.S.C. § 7801(30), means the supervisory union or supervisory district.

Secretary: means the Secretary of the Vermont Agency of Education.

Special Education Services: means specially designed instruction, at no cost to the parent, to meet the unique needs of an eligible student with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions and in other settings and instruction in physical education. Specially designed instruction means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction to address the unique needs of the student that result from the student's disability and to ensure access of the student to the general curriculum, so that the student can meet the educational standards within the State that apply to all children. This definition is intended to be consistent with the term "Special Education Services" as used in SBE Rule 2360.2.12 and 34 C.F.R. 300.39.

State-placed Student: as defined in 16 V.S.A. § 11(a)(28).

Student: means a person age three through age twenty-one, inclusive.

For purposes of Rule Series 1300 only, "child with a disability," "student with a disability," and "eligible student" shall refer to: a student who has been found eligible for special education and related services consistent with the process found in SBE Rules 2361 and 2362.



Student who requires additional support: as defined in 16 V.S.A. § 2942(8).

### **1304 USE OF IDEA PART B FUNDS:**

Per 2 C.F.R. 200, subpart E, uses of federal grant funds must be reasonable, allocable, and necessary. An LEA may use the funds received in the IDEA-B subgrant as indicated below.

#### **1304.1 General Rule (34 C.F.R. § 300.202)**

(a) Amounts provided to an LEA under IDEA Part B must be used only to pay the excess cost, as defined in 34 C.F.R. § 300.16, of providing special education and related services to children with disabilities, consistent with 34 C.F.R. § 300.202; and

(b) Must be used to supplement State, local, and other federal funds and not supplant those funds.

(c) In order to assist LEAs in determining whether funds provided under IDEA Part B may be used for a specific activity, the Agency of Education shall maintain a Technical Manual for Use and Accounting of IDEA Part B Entitlement Grants. The Technical Manual shall list the common services that are deemed to be consistent with the excess cost rule in 34 C.F.R. 300.16. The Technical Manual shall be based on and updated according to guidance from the United States Department of Education's Office of Special Education Programs (OSEP).

- (1) Before publishing the technical manual required by subsection (c), the Agency shall post a draft manual on the Agency website for 30 days and allow public comment. Before the Technical Manual becomes effective, the Agency shall publish all public comments received and the Agency's written response(s).

#### **1304.2 Coordinated Early Intervening Services (CEIS) (34 C.F.R. § 300.226)**

(a) An LEA may elect to use up to 15 percent of its total IDEA Part B allocation in any fiscal year to implement Coordinated Early Intervening Services to provide early intervening services for those students not yet identified as needing special education or related services, but who may need additional academic and behavioral supports to meet grade-level indicators. More specifically, these services should be targeted to PreKindergarten-12 (with a focus on PreKindergarten-3) students.

(b) An LEA may be required to use 15 percent of its total IDEA Part B allocation in any fiscal year to implement CEIS if the LEA is found to have significant disproportionality based on ethnicity or race with respect to identification, placement, and disciplinary removals.

**1304.3 Schoolwide Programs Under Title I of the Elementary and Secondary Education Act (ESEA) (34 C.F.R. § 300.206)**

An LEA may use funds received under IDEA Part B in any fiscal year to carry out a schoolwide program under section 1114 of the ESEA, in accordance with 34 C.F.R. § 300.206.

**1305 USE OF STATE FUNDS**

**1305.1 Census Block Grant**

- (a) If an LEA is able to meet its ongoing service requirements under IDEA Part B and Vermont law, census-block funds may be invested in system structures or programs for students with and without disabilities requiring additional supports.
- (b) Notwithstanding subsection (a), an LEA is responsible for complying with the maintenance of effort provisions in Rule 1306.

**1305.2 State-placed Reimbursement**

Pursuant to 16 V.S.A. § 2950(a), the Secretary may approve any costs incurred in educating a State-placed student who is not eligible for special education that are incurred due to the special needs of the student.

**1305.3 Essential Early Education (EEE/ECSE)**

- (a) Essential Early Education grant funds shall be used to provide a free appropriate public education to all students three through five years of age within the LEA who are eligible for special education services.
- (b) Once an LEA has fulfilled its obligations under subsection (a), EEE/ECSE grant funds may be used to provide:
  - (1) Child Find activities as specified to determine eligibility of a child who is younger than three years of age; or
  - (2) Services to students who are three through five years of age who have been identified as being at risk of school failure.
- (c) An LEA, at its discretion, may use EEE grant funds to support resident students enrolled in a public or private, prequalified, PreKindergarten education program located outside the LEA's jurisdiction.

**1306 MAINTENANCE OF EFFORT (MOE) (34 C.F.R. § 300.203)**

### **1306.1 Eligibility Standard**

- (a) For purposes of establishing the LEA's eligibility for a federal award under IDEA Part B for a particular fiscal year, the Secretary must determine that the LEA has budgeted, for the education of students with disabilities, at least the same amount, from at least one of the following sources, as the LEA spent for that purpose from the same source for the most recent fiscal year for which information is available:
- (1) Local funds only;
  - (2) The combination of State and local funds;
  - (3) Local funds only on a per capita basis; or
  - (4) The combination of State and local funds on a per capita basis.
- (b) When determining the amount of funds that the LEA must budget to meet the requirement in subsection (a), the LEA may take into consideration, to the extent the information is available, the exceptions and adjustment provided in 34 C.F.R. §§ 300.204 and 300.205 that the LEA:
- (1) Took in the intervening year or years between the most recent fiscal year for which information is available and the fiscal year for which the LEA is budgeting; and
  - (2) Reasonably expects to take in the fiscal year for which the LEA is budgeting.

### **1306.2 Compliance Standard**

- (a) Except as provided in 34 C.F.R. §§ 300.204 and 300.205, funds provided to an LEA under IDEA Part B must not be used to reduce the level of expenditures for the education of students with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year. An LEA meets this standard if it does not reduce the level of expenditures for the education of students with disabilities made by the LEA from at least one (1) of the following sources below the level of those expenditures from the same source for the preceding fiscal year, except as provided in 34 C.F.R. §§ 300.204 and 300.205:
- (1) Local funds only;
  - (2) The combination of State and local funds;
  - (3) Local funds only on a per capita basis; or
  - (4) The combination of State and local funds on a per capita basis.
- (b) Expenditures made from funds provided by the federal government for which the Secretary is required to account to the federal government or for which the LEA is required to account to

the federal government directly or through the Secretary may not be considered in determining whether an LEA meets the standard in subsection (a).

### **1306.3 Subsequent Years Rule**

If an LEA fails to meet the requirements of MOE, the level of expenditures required of the LEA for the fiscal year subsequent to the year of the failure is the amount that would have been required in the absence of that failure, not the LEA's reduced level of expenditures.

### **1306.4 Consequence of Failure to Maintain Effort**

If an LEA fails to maintain its level of expenditures for the education of students with disabilities in accordance with Rule 1306.2, the Agency of Education is liable in a recovery action under section 452 of the General Education Provisions Act (20 U.S.C. 1234a) to return to the Department of Education, using non-federal funds, an amount equal to the amount by which the LEA failed to maintain its level of expenditures in that fiscal year, or the amount of the LEA's Part B subgrant in that fiscal year, whichever is lower.

### **1306.5 Exceptions to Maintenance of Effort (34 C.F.R. § 300.204)**

Allowance may be made for the difference between the level of effort in the current fiscal year and the amount required to maintain effort for the following reasons:

- (a) The voluntary departure, by retirement or otherwise, or departure by just cause, of special education or related services personnel;
- (b) A decrease in the enrollment of students with disabilities;
- (c) The termination of the obligation of the LEA, consistent with this part, to provide a program of special education to a particular student with a disability that is an exceptionally costly program, as determined by the Secretary, because the student has left the jurisdiction of the LEA, has reached the age at which the obligation of the LEA to provide FAPE to the student has terminated, or no longer needs the program of special education;
- (d) The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities; or
- (e) The assumption of cost by the high cost fund operated by the Secretary under 34 C.F.R. 300.704(c).

## **1307 DOCUMENTING MAINTENANCE OF EFFORT**

When calculating the eligibility test of maintenance of effort, an LEA may include budgeted expenses that are attributable to the education of children with disabilities. When calculating the compliance test of maintenance of effort, an LEA may include actual expenses that are attributable to the education of children with disabilities. 34 C.F.R. § 300.203.

For purposes of calculating maintenance of effort, a budgeted or actual expense is attributable to the education of children with disabilities if it is the result of:

- (a) Providing special education or related services and/or supplementary aids and services that are articulated in a student's IEP; or
- (b) Instructional, behavioral, and other academic/non-academic supports that are provided to students with and without disabilities, so long as the services provided are articulated in an eligible student's IEP; or
- (c) An IEP team decision to place an eligible special education student in an approved independent school that limits enrollment to students who are on an individualized education program, or a plan under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and who are enrolled pursuant to a written agreement between the local education agency and the school. In such a case, tuition associated with that placement shall be considered eligible and may count toward maintenance of effort.
- (d) Non-student-specific expenditures reasonably related to the provision of special education services.
  - (1) Non-student-specific expenditures include but are not limited to child find, special education administration costs, and costs of software used to maintain special education files. The Agency of Education shall maintain a Technical Manual for Documenting Maintenance of Effort under 34 C.F.R. § 300.203. The Technical Manual shall list the common services that are deemed to be reasonably related to the provision of special education services under (c), above. An expenditure not included in the Technical Manual may be allowed on a case-by-case basis if written prior approval is granted by the Agency.
  - (2) Before publishing the technical manual required by subsection (d)(1), the Agency shall post a draft manual on the Agency website for 30 days and allow public comment. Before the Technical Manual becomes effective, the Agency shall publish all public comment received and the Agency's written response(s).

## **1308 ADMINISTRATION OF GRANTS AND REIBURSEMENTS**

### **1308.1 Census Block**

#### **1308.1.1 Calculation**

- (a) The census grant shall be calculated in accordance with 16 V.S.A. § 2961.
- (b) On or before December 15<sup>th</sup>, the Secretary shall publish an estimate of the census block grant, payable to each LEA for the ensuing fiscal year.

#### **1308.1.2 Payment**

On or before August 15, December 15, and April 15 of each school year, each LEA shall receive one-third of the census grant under section 2961 for that fiscal year.

### **1308.2 Extraordinary Special Education Expenditure Reimbursement**

#### **1308.2.1 Submission**

Consistent with 16 V.S.A. § 2969(a)(2), each LEA shall submit a financial report to the Secretary containing details of all extraordinary expenditures during the reporting period. Reports shall be submitted on or before November 15, January 15, April 15, and August 1. LEAs shall use a reporting format specified by the Secretary. Extraordinary expenditure reporting shall include, but is not limited to: student's name; student's date of birth; student's town of residence; student's responsible LEA; disability category[ies]; placement; residential placement; special education tuition; and non-tuition costs broken out by the State's Uniform Chart of Accounts.

#### **1308.2.2 Review**

The Secretary will review the extraordinary expenditure report in accordance Rules 1304 and 1305 and Rule 2200 (Independent Schools).

#### **1308.2.3 Payment**

- (a) On or before December 15, February 15, May 15, and September 15 of each school year, each LEA shall receive the amount of extraordinary reimbursement incurred by it under 16 V.S.A. § 2962 that is unreimbursed and determined by the Secretary to be payable to the LEA.



- (b) The Secretary may determine certain expenditures to be non-reimbursable if they fail to meet the requirements of Rule 1308.2.2. Total payments made for extraordinary expenditures will be the total amount submitted in the extraordinary expenditure report less any expenditures determined to be non-reimbursable.

#### **1308.2.4 Special Education Administration Costs**

Special Education administration costs shall not be included as a cost of an individual student when reporting and calculating extraordinary special education expenditures.

### **1308.3 Essential Early Education**

#### **1308.3.1 Calculation**

Essential Early Education (EEE) grants shall be calculated according to the estimated number of students from three through five years of age in the LEA. The estimated number of students who are three through five years of age shall be based on the last verified average daily membership of all students enrolled within the LEA in grades one through three. The Secretary shall announce the estimated number of students three through five years of age in each LEA and the proposed grant allocation amounts by December 15th.

#### **1308.3.2 Payment**

- (a) All LEAs shall receive an EEE grant each year. Grant payments will be made on August 15 and December 15 of each year and one-half of the annual amount will be forwarded on each date.
- (b) LEAs shall make reasonable efforts to coordinate services with local public and private agencies that provide services to students of three through five years of age.

### **1308.4 State-placed Special Education Expenditure Reimbursement**

The Secretary shall reimburse an LEA 100 percent of allowable special education costs for a state-placed student as defined in 16 V.S.A. § 11(a)(28).

#### **1308.4.1 Submission**

Consistent with 16 V.S.A. § 2969(a)(2), an LEA shall submit a financial report to the Secretary containing details of all state-placed student expenditures during the reporting period. Reports shall be submitted on or before November 15, January 15, April 15, and August 1. LEAs shall use a reporting format specified by the Secretary.

#### **1308.4.2 Review**

The Secretary will review the state-placed student expenditure report in accordance with Rules 1304 and 1305.

#### **1308.4.3 Payment**

- (a) On or before December 15, February 15, May 15, and September 15 of each school year, each LEA shall receive the amount of state-placed reimbursement incurred by the LEA under 16 V.S.A. § 2950(a) that is unreimbursed and determined by the Secretary to be payable to the LEA.
- (b) The Secretary may determine certain expenditures to be non-reimbursable if they fail to meet the requirements of Rules 1304 and 1305. Total payments made for state-placed expenditures will be the total amount submitted in the state-placed expenditure report less any expenditures determined to be non-reimbursable.

#### **1308.4.4 Payments for State-Placed Students in Residential Placements and Out-of-State Public Schools**

Payments for state placed students in residential placements and out-of-state public schools shall be in accordance with 16 V.S.A. § 2950.

### **1309 FISCAL MONITORING AND REPORTING**

- (a) The Secretary shall periodically monitor all LEAs for compliance with Vermont statutes and rules, and federal requirements under the Individuals with Disabilities Education Act (IDEA) and Uniform Guidance. The monitoring process shall include, but not be limited to, review of LEA special education budgets, expenditures, and supporting documentation.
- (b) The monitoring procedures may include, but are not limited to:
  - (1) Risk analysis;
  - (2) Sampling and review of documentation;
  - (3) Corrective action plan development and review.
- (c) After the monitoring process is completed, a report shall be written and sent to the LEA. If the report indicates noncompliance, the LEA shall develop a corrective action plan in response to the findings of noncompliance and submit the plan to the Secretary for approval. The Secretary shall review the corrective action plan and notify the LEA if it is acceptable.
- (d) A corrective action plan shall include, but not be limited to, the following:



- (1) Objectives and strategies for correcting each noncompliance item cited, including resources needed; and
  - (2) The dates by which noncompliance will be corrected.
- (e) When a corrective action plan is not submitted, found unacceptable, or not implemented, the Secretary shall notify the LEA of the actions the Secretary intends to take. These actions may include, but are not limited to:
- (1) Further monitoring;
  - (2) Mandatory technical assistance or professional development;
  - (3) Withholding or directing of funding.
- (f) An LEA shall provide documentation necessary for the Secretary to fulfill its reporting obligations pursuant to federal regulations. Documentation shall be provided in accordance with the timeline and format specified by the Secretary.
- (g) If documentation is not submitted consistent with subsection (f), the Secretary shall notify the LEA of the actions the Secretary intends to take.

## **1310 COLLABORATIVE PROGRAMS**

### **1310.1 Collaborative Program Definition; Tuition**

A “collaborative program” is a program created pursuant to an agreement between two or more LEAs in accordance with 16 V.S.A. § 267, for the purpose of cooperatively providing special education services. A collaborative program may offer one or more component programs (e.g. multi-disabilities, emotionally disturbed, diversified occupations). A collaborative program may charge a tuition pursuant to 16 V.S.A. § 826(b).

### **1310.2 Collaborative Program Accounting**

The accounting for each collaborative program shall be in accordance with the technical guidance issued by the Agency and:

- (a) An enterprise fund as defined in technical guidance shall be established to account for the funds for each collaborative program;
- (b) Notice of tuition shall be provided by the collaborative program to the appropriate school board(s) as set forth in 16 V.S.A. § 826(a);
- (c) Such tuition notice shall include a description of services to be provided, and the amount of

the tuition for each component program;

- (d) Tuition shall be proportionately calculated for students who are part-time; and
- (e) Final tuition charged shall be calculated based on the actual cost of the program.

### **1310.3 Non-collaborative Tuition**

- (a) An LEA may charge tuition under 16 V.S.A. § 826(b) for providing special education services. Both special education tuition and excess costs must reflect allowable special education expenditures. In the case of a supervisory district, special education tuition shall not be charged for a student whose district of residence is the school district. In the case of a supervisory union, special education tuition shall not be charged for a student from within the supervisory union unless otherwise agreed pursuant to 16 V.S.A. § 301.
- (b) All the provisions of Rule 1310.2 apply to tuition under subsection (a) above, except that:
  - (1) It is permissible but not required that an enterprise fund be established; and
  - (2) The notice of tuition establishes the maximum tuition which can be charged.

### **1310.4 Excess Costs Procedure**

Excess costs that may be charged under 16 V.S.A. § 826(c) and 16 V.S.A. § 2962(e) are limited to allowable special education costs for services not covered by a general education tuition or a special education tuition. Allowable special education costs for this purpose are defined in Rules 1304 and 1305. The following procedures shall apply to excess costs:

- (a) Excess cost shall be calculated based on the actual costs attributable to the student as required in their IEP.
- (b) District of residence or agency responsible shall be given prior notice by the billing supervisory union, supervisory district, or approved independent school as per 16 V.S.A. § 2962(e), that an excess cost will be charged;
- (c) Notice shall indicate the student's name, type, frequency of service to be provided, fee for services to be provided, and proposed billing schedule; and
- (d) No excess costs will be allowable in the absence of a fully executed contract. Such contract must meet minimum criteria of Uniform Guidance (2 C.F.R. Part 200) and State procurement guidelines or be in a form approved for this purpose by the Secretary.

### **1310.5 Allowable Costs Reporting**

For financial and statistical reporting to the Secretary, the cost reported by an LEA for all allowable special education services shall be the actual cost of services provided minus the

revenue received or due for excess costs.

### **1310.6 Allocation of Attorney's Fees**

All awards, costs and fees associated with a legal proceeding in which a collaborative program is a party shall be borne by the LEA of the student's residence unless otherwise agreed upon by the collaborative's members. However, the foregoing shall not be construed to mean that a collaborative or LEA shall be responsible for the legal fees of a parent unless ordered by a court or agreed to in mediation.

### **1311 LOCAL EDUCATION AGENCY PLAN (34 C.F.R § 300.200)**

Each LEA that receives IDEA B federal funds shall submit a local education agency plan providing assurances as required by the Vermont Agency of Education.

### **1312 ACT 173 EVALUATION**

- (a) The Secretary shall integrate existing monitoring and reporting practices to inform an evaluation process designed to assess the following goals of Act 173 as they relate to services LEAs provide to all students who require additional support:
- (1) effectiveness of services;
  - (2) availability of services;
  - (3) equity of services, and
  - (4) supervisory union compliance with the IDEA and State law.
- (b) This evaluation process shall be available for implementation concurrent with full implementation of the census-based funding model pursuant to 16 V.S.A. § 2961.
- (c) The results of any evaluation conducted pursuant to this Rule shall be provided to the Legislature, the LEAs, and the general public.

### **Effective Date:**

**These rules will take effect on July 1, 2022.**

DRAFT

**No. 173. An act relating to enhancing the effectiveness, availability, and equity of services provided to students who require additional support.**

(H.897)

It is hereby enacted by the General Assembly of the State of Vermont:

\* \* \* Findings \* \* \*

Sec. 1. FINDINGS

(a) In 2016 Acts and Resolves No. 148, the General Assembly directed the Agency of Education to contract with a consulting firm to review current practices and recommend best practices for the delivery of special education services in school districts. The Agency of Education contracted with the District Management Group, which issued in November 2017 its report entitled “Expanding and Strengthening Best-Practice Supports for Students who Struggle” (Delivery of Services Report).

(b) In Act 148, the General Assembly also directed the Agency of Education to contract for a study of special education funding and practice and to recommend a funding model for Vermont designed to provide incentives for desirable practices and stimulate innovation in the delivery of services. The General Assembly required that the study consider a census-based model of funding. The Agency of Education contracted with the University of Vermont and State Agricultural College, and the report of its Department of Education and Social Services entitled “Study of Vermont State Funding for Special Education” was issued in December 2017 (Funding Report).

\* \* \* Rulemaking \* \* \*

Sec. 16. RULEMAKING

The Agency of Education shall recommend to the State Board proposed rules that are necessary to implement this act and, on or before November 1, 2019, the State Board of Education shall adopt rules that are necessary to implement this act. The State Board and the Agency of Education shall consult with the Census-based Funding Advisory Group established under Sec. 9 of this act in developing the State Board rules. The State Board rules shall include rules that establish processes for reporting, monitoring, and evaluation designed to ensure:

(1) the achievement of the goal under this act of enhancing the effectiveness, availability, and equity of services provided to all students who require additional support in Vermont's school districts; and

(2) that supervisory unions are complying with the Individuals with Disabilities Education Act, 20 U.S.C. chapter 33.

\* \* \* Transition \* \* \*

Sec. 17. TRANSITION

(a) Notwithstanding the requirement under 16 V.S.A. § 2964 for a supervisory union to submit a service plan to the Secretary of Education, a supervisory union shall not be required to submit a service plan for fiscal year 2021.

**No. 72. An act relating to making appropriations for the support of government.**

(H.542)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. A.100 SHORT TITLE

(a) This bill may be referred to as the BIG BILL – Fiscal Year 2020 Appropriations Act.

Sec. A.101 PURPOSE

(a) The purpose of this act is to provide appropriations for the operations of State government during fiscal year 2020. It is the express intent of the General Assembly that activities of the various agencies, departments, divisions, boards, and commissions be limited to those that can be supported by funds appropriated in this act or other acts passed prior to June 30, 2019. Agency and department heads are directed to implement staffing and service levels at the beginning of fiscal year 2020 so as to meet this condition unless otherwise directed by specific language in this act or other acts of the General Assembly.

Sec. A.102 APPROPRIATIONS

(a) It is the intent of the General Assembly that this act serves as the primary source and reference for appropriations for fiscal year 2020.

(b) The sums herein stated are appropriated for the purposes specified in the following sections of this act. When no time is expressly stated during which any of the appropriations are to continue, the appropriations are single-

(a) Of the appropriation authorized in this section, and notwithstanding any other provision of law, an amount not to exceed \$3,764,490 shall be used by the Agency of Education in fiscal year 2020 as funding for 16 V.S.A. § 2967(b)(2)–(6). In distributing such funds, the Secretary shall not be limited by the restrictions contained within 16 V.S.A. § 2969(c) and (d).

Sec. E.502.1 2018 Acts and Resolves No. 173, Sec. 16 is amended to read:

Sec. 16. RULEMAKING

The Agency of Education shall recommend to the State Board proposed rules that are necessary to implement this act and, on or before ~~November~~ August 1, 2019 2020, the State Board of Education shall ~~adopt~~ initiate rules that are necessary to implement this act. The State Board and the Agency of Education shall consult with the Census-based Funding Advisory Group established under Sec. 9 of this act in developing the State Board rules. The State Board rules shall include rules that establish processes for reporting, monitoring, and evaluation designed to ensure:

(1) the achievement of the goal under this act of enhancing the effectiveness, availability, and equity of services provided to all students who require additional support in Vermont's school districts; and

(2) that supervisory unions are complying with the Individuals with Disabilities Education Act, 20 U.S.C. chapter 33.

Sec. E.502.2 2018 Acts and Resolves No. 173, Sec. 23 is amended to read:





# Proposed Rules Postings

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### Deadline For Public Comment

Deadline: May 29, 2020

The deadline for public comment has expired. Contact the agency or primary contact person listed below for assistance.

### Rule Details

Rule Number:	20P011
Title:	Special Education Finance and Census-Based Funding.
Type:	Standard
Status:	Proposed
Agency:	Board of Education
Legal Authority:	Act No. 173 (2018) Sec. 16; as amended by Act No. 72 (2019) Sec. E.502.1.
Summary:	Act 173 of 2018 shifts the funding mechanism of special education from a reimbursement system to a block grant system by 2025. The new model aims to simplify administration of funds at both state and local levels, and align with policy priorities around

special education service delivery. These rules establish administrative requirements necessary to shift state special education funding from a reimbursement to a census-based structure; guide the use of special education funds consistent with state and federal requirements; prioritize the special education entitlement conferred by the Individuals with Disabilities Education Act (IDEA); establish a special education fiscal monitoring process; and outline an evaluation process designed to assess the achievement of the goals of Act 173 (2018). These rules are written with an effective date of July 1, 2021.

**Persons Affected:** Supervisory Unions (Sus) / School Districts (SDs); school staff; parents; children with disabilities or children being evaluated for disabilities, advocacy groups; and the Agency of Education (AOE).  
 These rules effectuate the shift in funding directed by Act 173 of 2018, which may have significant impacts on individual Supervisory Unions and School Districts. On a statewide level, however, the Act is structured to contain special education costs and to be cost-neutral to the state.

**Economic Impact:**

**Posting date:** Mar 18,2020

## Hearing Information

### Information for Hearing # 1

**Hearing date:** 04-22-2020 4:00 PM [ADD TO YOUR CALENDAR](#)

**Location:** Bellows Falls Union High School  
**Address:** 406 High School Road  
**City:** Westminster  
**State:** VT  
**Zip:** 05158

**Hearing Notes:**

### Information for Hearing # 2

**Hearing date:** 05-06-2020 4:00 PM [ADD TO YOUR CALENDAR](#)

**Location:** Randolph Union High School  
**Address:** 15 Forest Street  
**City:** Randolph  
**State:** VT  
**Zip:** 05060

**Hearing Notes:**

**Information for Hearing # 3**

Hearing date: 05-20-2020 4:00 PM [ADD TO YOUR CALENDAR](#)

Location: Bellows Free Academy

Address: 71 S. Main St.

City: St. Albans

State: VT

Zip: 05478

Hearing Notes:

**Contact Information****Information for Primary Contact**

**PRIMARY CONTACT PERSON - A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE.**

Level: Primary

Name: Emily Simmons

Agency: Agency of Education

Address: 1 National Life Drive, Davis 5

City: Montpelier

State: VT

Zip: 05602-2501

Telephone: 802-828-1518

Fax: 802-828-6430

Email: [emily.simmons@vermont.gov](mailto:emily.simmons@vermont.gov)

[SEND A COMMENT](#)

Website Address: <https://education.vermont.gov/state-board-councils/state-board/rulemaking>

[VIEW WEBSITE](#)

**Information for Secondary Contact**

**SECONDARY CONTACT PERSON - A SPECIFIC PERSON FROM WHOM COPIES MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON.**

Level: Secondary

Name: Judy Cutler

Agency: Agency of Education

Address: 1 National Life Drive, Davis 5

City: Montpelier

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Zip: 05602-2501

Telephone: 802-828-0079

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## Keyword Information

Keywords:

Special Education

Act 173 (2018)

Census-Based Funding

Individuals with Disabilities Education Act

IDEA

Free appropriate public education

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## PROPOSED STATE RULES

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By law, public notice of proposed rules must be given by publication in newspapers of record. The purpose of these notices is to give the public a chance to respond to the proposals. The public notices for administrative rules are now also available online at <https://secure.vermont.gov/SOS/rules/>. The law requires an agency to hold a public hearing on a proposed rule, if requested to do so in writing by 25 persons or an association having at least 25 members.

To make special arrangements for individuals with disabilities or special needs please call or write the contact person listed below as soon as possible.

To obtain further information concerning any scheduled hearing(s), obtain copies of proposed rule(s) or submit comments regarding proposed rule(s), please call or write the contact person listed below. You may also submit comments in writing to the Legislative Committee on Administrative Rules, State House, Montpelier, Vermont 05602 (802-828-2231).

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### Special Education Finance and Census-Based Funding.

Vermont Proposed Rule: 20P011

AGENCY: Department of Education / Vermont Board of Education

CONCISE SUMMARY: Act 173 of 2018 shifts the funding mechanism of special education from a reimbursement system to a block grant system by 2025. The new model aims to simplify administration of funds at both state and local levels and align with policy priorities around special education service delivery. These rules establish administrative requirements necessary to shift state special education funding from a reimbursement to a census-based structure; guide the use of special education funds consistent with state and federal requirements; prioritize the special education entitlement conferred by the Individuals with Disabilities Education Act (IDEA); establish a special education fiscal monitoring process; and outline an evaluation process designed to assess the achievement of the goals of Act 173 (2018). These rules are written with an effective date of July 1, 2021.

FOR FURTHER INFORMATION, CONTACT: Emily Simmons, Agency of Education 1 National Life Drive, Davis 5 Montpelier, VT 05602-2501 Tel: 802-828-1518 Fax: 802-828-6430 Email: [emily.simmons@vermont.gov](mailto:emily.simmons@vermont.gov) URL: <https://education.vermont.gov/state-board-councils/state-board/rulemaking>.

FOR COPIES: Judy Cutler, Agency of Education 1 National Life Dr., Davis 5, Montpelier, VT 05602-2501 Tel: 802-828-0079 Fax: 802-828- 6430 Email: [judy.cutler@vermont.gov](mailto:judy.cutler@vermont.gov).

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### Special Education Rules, Parts B (Ages 3-22) and C (Birth to Age 3).

Vermont Proposed Rule: 20P012

AGENCY: Department of Education / Vermont Board of Education

CONCISE SUMMARY: Act 173 of 2018 shifts the funding mechanism of special education from a reimbursement system to a block grant system by 2025. The new model aims to simplify administration of funds at both state and local levels, and align with policy priorities around special education service delivery. These rules will separate special education funding requirements from programmatic and service delivery requirements. Additionally, this amendment aligns with state and federal regulations, improves clarity, and makes technical corrections. Substantive revisions include: revising the definition of "special education services" to correspond with the federal definition, adding available interpreting services, clarifying and updating Essential Early Education rules, revising the Initial Evaluation rule for conformity with Act 173 (2018),

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and adding a special education monitoring rule. These rules are written with an effective date of July 1, 2021.

FOR FURTHER INFORMATION, CONTACT: Judy Cutler, Agency of Education 1 National Life Dr., Davis 5, Montpelier, VT 05602-2501 Tel: 802-828-0079 Fax: 802-828-6430 Email: [judy.cutler@vermont.gov](mailto:judy.cutler@vermont.gov) URL: <https://education.vermont.gov/state-board-councils/state-board/rulemaking>.

FOR COPIES: Emily Simmons, Agency of Education 1 national Life Drive, Davis 5 Montpelier, VT 05602-2501 Tel: 802-828-1518 Fax: 802-828-6430 Email: [emily.simmons@vermont.gov](mailto:emily.simmons@vermont.gov).

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Underground Storage Tank (UST) Rules.

Vermont Proposed Rule: 20P013

AGENCY: Agency of Natural Resources, Environmental Conservation

CONCISE SUMMARY: This is an update of the existing Underground Storage Tank Rules (effective October 13, 2018). These rules mirror Federal regulations and are a major factor in EPA's delegation of the program to the State. The rule regulates the installation and operation of underground storage tank systems that store gasoline, diesel fuel, heating oil, kerosene, used oil, and other hazardous materials. These materials have great potential to affect human health and the environment, and the rules serve to minimize the potential threat from the underground storage tank systems. The 2020 changes will not include any new requirements that tank owners and operators must deal with, but will streamline requirements making it easier for the regulated community to comply when a facility changes ownership or important repairs are needed.

FOR FURTHER INFORMATION, CONTACT: Ted Unkles, Agency of Natural Resources, Department of Environmental Conservation Waste Management & Prevention Division 1 National Life Drive, Davis 1 Montpelier VT 05620-3704 Tel: 802-522-0488 Fax: 802-828-1011 Email: [ted.unkles@vermont.gov](mailto:ted.unkles@vermont.gov) URL: <https://dec.vermont.gov/waste-management/storage-tanks>.

FOR COPIES: Jaymi Cleland, Agency of Natural Resources, Department of Environmental Conservation Waste Management & Prevention Division 1 National Life Drive, Davis 1 Montpelier VT 05620-3704 Tel: 802-917-1386 Fax: 802-828-1011 Email: [jaymi.cleland@vermont.gov](mailto:jaymi.cleland@vermont.gov).

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