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Chairman Campion and members of the Vermont Senate Education Committee

RE: House Bill: H.716 - An act relating to making miscellaneous changes in education law

Good afternoon,

My name is Jamie Crenshaw and I live in Milton VT with my husband and 4 children. I have testified several times in the last couple of years regarding various education bills that could directly impact early identification and intervention for students classified under the specific learning disabilities category. I am a member of Decoding Dyslexia, a member of the Special Education Advisory Panel, a graduate of the Vermont Leadership Series, and a parent of two children who received special education services under the disability umbrella category specific learning disability. In this letter, I will be speaking as a parent and not as a representative of any organization.

The implementation of rules 2362 and 2362.2.5 has the potential to drastically decrease the achievement gap for students with specific learning disabilities because it removes the adverse effect and the discrepancy model criteria. The change in rule 2362 and 2362.2.5 for the specific learning disability, deaf-blindness, and developmental delay categories may not have come about because of Act 173 but instead as a direct result of Vermont's failure to comply with federal regulations. The changes help Vermont's Special Education Rules and Regulations align to that of the Individuals with Disabilities Act, also known as IDEA. I support the proactive and preventative change of removing adverse effect for all 13 disability categories because it provides all children who have a disability the right to early intervention. My comments today though will focus specifically on the specific learning disability category.

To receive federal special education funding, states must develop special education rules and regulations that are consistent with IDEA. Under IDEA, to determine if a child qualifies for special education services, an Evaluation and Planning Team, made up of qualified individuals, including parents or guardians, must determine the following:

1. The child has a "disability" as defined in 300.8
2. The disability results in **adverse effect** on a child's educational performance in one or more basic skills areas
3. The child needs special education services to access and benefit from their educational program

IDEA Section 300.8 (c)(10) defines specific learning disability as "having one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia."

If the disorder is not “primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage”, then the Evaluation and Planning Team must make the determination that the child is likely a child with a specific learning disability.

Note the absence for any “severe discrepancy” or any requirement that says the disability “adversely effects educational performance”. IDEA section 300.8 *Child with a disability* does not require adverse effect on a child’s educational performance for the specific learning disability category. (See page 4) Therefore, delaying the implementation of rule 2362 and 2362.2.5 would be in defiance of federal regulations. Removing the adverse effect criteria for specific learning disabilities leaves educators answering only two of the three questions; is this a child with a disability, and who, by reason thereof, needs special education and related services?

The State of Vermont Special Education Rule Section 2362.2.5 *Additional Procedures for Identifying Children with Specific Learning Disabilities* states “When using a discrepancy model, the Evaluation and Planning Team shall document that the student **exhibits a discrepancy of 1.5 standard deviations or greater between ability and expected performance** in one or more of the basic skill areas.” Students generally do not exhibit a discrepancy of 1.5 standard deviations or greater until third grade or after. This is because students with learning disabilities are no longer able to compensate. The academic content is just too difficult. The discrepancy model is essentially a “wait to fail” situation: children do not receive help until they are far behind their peers. Early intervention is considered a key factor in helping specific learning disability students become successful in school, yet Vermont still relies on the somewhat ineffective discrepancy model. Continuing to use both adverse effect and the discrepancy model as criteria for determining eligibility for specific learning disability could be viewed as discrimination and a violation of the IDEA because they deny a child with specific learning disabilities equal access to education. According to the Office of Civil Rights, “Students with disabilities have the same right to K-12 public education that students without disabilities have. To receive and benefit from that education, student with disabilities may need special education and/or related aids and services” ...” Schools must provide FAPE (Free Appropriate Public Education) regardless of the severity of child’s disability”.

The new rule change moves the eligibility determination criteria for specific learning disability away from a reactive “wait to fail” model and into a more proactive approach called Response to Intervention. This preventative approach is intended to rectify several long-standing problems, including the practice of waiting for documented failure before providing services. Both approaches are defined in the current Vermont rules section 2362.2.5. The section states “In making the determination that a student has a specific learning disability the LEA shall decide whether to use a discrepancy model **or a model based on whether the student responds to scientific, research-based interventions.**” ... “When using a model based on whether the student responds to scientific, research-based intervention the EPT (Evaluation and Planning Team) shall document the following:

1. High-quality instruction and scientific research-based tiered interventions aligned with individual student needs;
2. Frequent monitoring of student progress to make results-based academic decisions; and
3. Use of student response data to evaluate the effectiveness of interventions.

The above approach relies heavily on the Multi-Tiered System of Support framework (VTmtss). A framework which Vermont first implemented back in 2014 under the name MTSS/RTII Field Guide.

Once the evaluation is complete, the data must then be interpreted. The process for determining eligibility using specific information is found in Section 300.306(c)(1)(i)(ii). When interpreting the evaluation data, the Evaluation and Planning Team must “Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child’s physical condition, social or cultural background, and adaptive behavior; and ensure that the information obtained from all of these sources is documented and carefully considered.”

After reviewing all the data, the Evaluation Planning Team can determine if a child is not making sufficient progress to meet age or State-approved grade level standards by referencing the Common Core Standards or the Vermont Early Learning Standards. Both represent goals for development and learning. This process, laid out in state regulations and federal law, is how the Evaluation Planning Team determines if a child has a specific learning disability, and who, by reason thereof, needs special education and related services.

Removing the adverse effect gate simplifies the process. It enables the Evaluation and Planning Team to identify what skill areas are delayed, which in turn, enables them to effectively determine whether the student needs specialized instruction before failure sets in. The change supports the intent of Act 173 because it “enhances the effectiveness, availability, and equity of services provided to all student who require additional support in Vermont’s school.

Bill H.716 has passed over to your committee. The bill “suspends the implementation of rules 2362 and 2362.2.5 until July 1, 2023. The **sole intent of the delay is to allow educators and staff time to adequately prepare for the delivery of special education services** as required under the State Board of Education special education rules series 2360.” To delay the implementation of rules 2362 and 2362.2.5 for specific learning disability eligibility is not only a violation of student rights to equal education access but is unnecessary. The eligibility determination criteria for specific learning disability have existed in federal law since it was last reauthorized in 2004. Determining specific learning disability eligibility using a model based on whether the student responds to scientific, research-based interventions has also existed in the State of Vermont Special Education rules since it was adopted on June 13, 2013. The Multi-Tiered System of Support was implemented in 2014. This means that Vermont educators and staff should already be fully trained and knowledgeable in determining specific learning disability eligibility, this includes using the Response to Intervention method. There should be no ambiguity or any significant professional development when implementing the new rule changes.

In closing, I ask that this Committee consider removing Sec. 2 from H.716. It is critical that Vermont’s special education regulations align with federal IDEA and that the existing provision of a free appropriate education for children with specific learning disabilities be retained.

Respectfully submitted,
Jamie Crenshaw

Sec. 300.8 Child with a disability

(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

(1) **Autism**

(i) Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that **adversely affects** a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

(ii) Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in paragraph (c)(4) of this section.

(iii) A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in paragraph (c)(1)(i) of this section are satisfied.

(2) **Deaf-blindness** means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness. **(No requirement of adverse effect)**

(3) **Deafness** means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that **adversely affects** a child's educational performance.

(4) **Emotional Disturbance**

(i) Emotional disturbance means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that **adversely affects** a child's educational performance:

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(C) Inappropriate types of behavior or feelings under normal circumstances.

(D) A general pervasive mood of unhappiness or depression.

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (c)(4)(i) of this section.

(5) **Hearing impairment** means an impairment in hearing, whether permanent or fluctuating, that **adversely affects** a child's educational performance but that is not included under the definition of deafness in this section.

(6) **Intellectual disability** means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that **adversely affects** a child's educational performance. The term "intellectual disability" was formerly termed "mental retardation."

(7) Multiple disabilities means concomitant impairments (such as intellectual disability-blindness or intellectual disability-orthopedic impairment), the combination of which causes such **severe educational needs** that they cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities does not include deaf-blindness.

(8) Orthopedic impairment means a severe orthopedic impairment that **adversely affects** a child's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

(9) Other health impairment means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that—

- (i)** Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and
- (ii) Adversely affects** a child's educational performance.

(10) Specific learning disability—

(i) General. Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

(ii) Disorders not included. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage. **(No requirement of adverse effect)**

(11) Speech or language impairment means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that **adversely affects** a child's educational performance.

(12) Traumatic brain injury means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that **adversely affects** a child's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

(13) Visual impairment including blindness means an impairment in vision that, even with correction, **adversely affects** a child's educational performance. The term includes both partial sight and blindness.