



March 16, 2022

Chair Sen. Brian Campion and Members of the Senate Education Committee

I am writing to you on the behalf of the many parents Vermont Family Network (VFN) supports. VFN is the federally designated Parent Training and Information (PTI) Center in Vermont. PTIs are required and funded by the Individuals with Disabilities Education Act (IDEA). Our Family Support Consultants have supported thousands of parents of children with disabilities for over 30 years!

Special education eligibility and evaluation has been the primary reason for many of our helpline calls. VFN opposes any delay of the new 2360 Rules regarding adverse effect and specific learning disabilities. These new Rules are necessary changes to implement Act 173 as they serve to “enhance the effectiveness, availability, and *equity* of services provided to all students who require additional support in Vermont’s school districts.” We recognize that educators continue to work under pandemic conditions, and we are grateful for that. But I urge that you put front and center the children and youth with disabilities who have not had and continue not to have their needs met because of the definition of adverse effect as currently operationalized in the Vermont Special Education Rules. For 30 years, Vermont has been the only state to operationalize adverse effect in such a manner. The Vermont Agency of Education (AOE) notes that under the new Rules “Rather than wait until students fall into the lowest 15th percentile ..., earlier identification can be made, resulting in the provision of more timely and appropriate supports and services for students in need.” The approved changes that families and supporters have been advocating for for close to ten years were passed, in part to more closely align with the federal requirement that to establish special education eligibility, the Evaluation Planning Team’s (EPT) focus would be the actual specialized instruction a student needs to meet their disability-related needs, rather than deciphering if the adverse effect gate has been met. This change has the potential to simplify the eligibility process.

Also - in conformance with federal language, the Rule changes will not exclude children with functional deficits from being found eligible for special education. The new Rules add functional skills to the basic skills area, which currently only lists academic skills. Functional skills are defined as the essential and critical skills needed

for a child 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. What does this mean? According to the Vermont AOE, it means that “in addition to grades and standardized tests scores, schools must consider how a child’s emotional, health or other conditions adversely affect their non-academic performance in social, behavioral and other domains as well. Adverse effect on educational performance cannot, therefore, be based solely on discrepancies in age or grade level performance in academic subject areas. Rather, when determining if a student’s disability has an adverse effect on educational performance, EPTs must consider all aspects of the child’s functioning at school, including academic, social/emotional, cognitive, communication, vocational and independent living skills. For example, an adverse effect can be manifested through behavioral difficulties at school; impaired or inappropriate social relations; impaired work skills, such as being disorganized, tardy; having trouble getting to school on time; and difficulty with following the rules.”

Under the new Rules regarding specific learning disabilities, districts will no longer use the discrepancy model for eligibility but instead determine whether the student responds to scientific, research-based intervention. Response to Intervention (RTI) and Multi-Tiered Systems of Supports (MTSS) have been part of the education landscape long before the pandemic. If professional development has been slow getting off the ground, that is not a conscionable reason to delay services to children with disabilities.

Please remember children with disabilities have been disproportionately affected by the pandemic. More than ever, our children need early identification and intervention. Further delay of the new Rules will penalize them further. Please make the right decision and prioritize the needs of Vermont’s most vulnerable children. Implement the 2360 Rules in their original timeframe.

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