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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:

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.



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

