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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

Thank you for inviting me to testify today. My name is Jamie Crenshaw. I am a parent member of the Vermont Special Education Advisory Panel. A graduate of the Vermont Leadership Series and a mother of two sons, ages 18 and 16, both of which have been diagnosed with dyslexia and dysgraphia. For today's testimony, I will be speaking as a parent and not as a representative of any organization.

As I stated in my March 18<sup>th</sup> written testimony, I do not support the delay in implementing rule 2362 or Rule 2362.2.5. In my opinion, delaying the changes would mean that Vermont is choosing to be willfully in defiance of the Federal IDEA law because the decision to delay will ultimately deny students with disabilities the right to early identification, evaluation, and special education and related services.

Section 2 of Bill H.716 is asking this Committee to answer the question of whether "our educators and staff have time to adequately prepare for the delivery of special education services?" In all honesty, I don't understand why this question is being asked. By approving the Rule changes, the Vermont Board of Education made the determination that these changes are necessary.

Through public comment, the Board of Education heard evidence that the language in the current VT Rule 2362 did not align with the federal IDEA. After approving the Rule changes the Board stated the rules were "overly rigid and caused students to be found ineligible for special education services on a technical or formulaic basis, rather than the well-informed judgement of qualified special educators."

This means that Vermont students with disabilities were being denied a free and appropriate education...an entitlement protected under the individuals with disabilities act. It shouldn't matter that the changes came from public comment. It doesn't make the changes any less important.

16 V.S.A. 165(7) states that our local education agencies need to "ensure that students are furnished educational services in accordance with any State or Federal entitlements." Early identification, evaluations and special education and related services for students with disabilities are entitlements protected under IDEA. IDEA 300.101(c) states "that each State must ensure that a free appropriate public education is available to any individual child with a disability who needs special education and related services, **even though the child has not failed** or been retained in a course or grade and is advancing from grade to grade". "Significantly below grade norms" means the 15th percentile or below...that is waiting for failure before supports are provided.

Public comments also identified that the language in Vermont's current Rule 2362 and 2362.2.5 denied FAPE for students in the categories of disability, deaf-blindness, and specific learning disabilities. Neither of these categories require an adverse effect on educational performance.

**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)

**Specific learning disability—**

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.

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)

**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.

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 deaf-blind and specific learning disability categories. Therefore, delaying the implementation of rule 2362 and 2362.2.5 would be in defiance of federal regulations.

The removal of adverse effect is also important when it comes to fulfilling Vermont's goal set in 16 V.S.A. 2903; *Preventing early school reading failure, reading instruction*. The statute states:

“Children who fail to read by the end of the first grade will likely fall further behind in school. The personal and economic costs of reading failure are enormous both while the student remains in school and long afterward. The state board of education, in collaboration with the agency of human services, higher education, literacy organizations, and others, shall develop a plan for establishing a comprehensive system of services for early education in the first three grades to ensure that all students learn to read by the end of the third grade.”

A comprehensive system of services includes early identification, evaluations and special education and related services for students who have a specific learning disability and who struggle to learn to read.

It is important to note that under IDEA 300.8, a child must meet a 2-prong test to be considered eligible for special education and related services:

- (1) They must be a child with a disability as defined in section 300.8: and
- (2) because of the impairment, need special education and related services

The Evaluation and Planning Teams answer these two questions using the Special Education Process. Of note, this is the process that many people have stated would require a significant practice change for

our special educators. There are seven steps in the process and from my understanding, only one step is impacted by the Rule changes.

1. **Referral or Child Find** – Current Practice: no impact by rule changes  
Child Find is the process of locating, evaluating, and identifying children with disabilities, age birth through 21, who may need special education and related services, even though they are not failing, been retained in a course or grade, even if they are advancing from grade to grade.
2. **Review existing information and data to determine if an evaluation is warranted** – Current Practice: no impact by rule changes
3. **Consent for evaluation** – Current Practice: no impact by rule changes
4. **Evaluation data-assessments and other information** – Current Practice: no impact by rule changes

The evaluation is a process of collecting and analyzing information about the whole student, with the goal of understanding the student's unique educational needs. Comprehensive evaluations must provide information relevant to making decisions about how to educate the student so they can access, engage, and make meaningful progress toward meeting age and grade level standards. Individuals who collect and interpret assessment data and other information must be appropriately skilled in test administration and other data collection methods.

5. **Evaluation findings/ Interpreting the data** – Current Practice: no impact by rule changes
6. **Eligibility decisions** – Impact from Rule Change

At this point, the Team should have collected and analyzed all the information so they should now be able to answer the two questions: Is this a child with a disability as defined in section 300.8, who because of their impairment, needs special education and related services. This is the step that is most impacted by the Rule changes, but I believe, it is positively impacted. The Rule changes ease the restrictions on eligibility. The Team, relying on the evaluation data that's been collected and their expertise and knowledge, are now able to make an eligibility decision. The decision around a child's eligibility is not always going to be the same from school to school and it shouldn't be. Each decision must be made by the Team, on a case-by-case basis, depending on the unique individual needs of a particular child, not based only on discrepancies in age or grade performance in academic subject areas.

7. **Evaluation report** – Last step, Current Practice: no impact by rule changes

The 7-step special education process will not, and does not change, regardless of which 3 identification methods are utilized. The only step that is being impacted by the rule changes is step 6, the Eligibility decision which, as others have stated, simplifies the process so that decisions made by the Team are decisions that rely on the combined expertise and knowledge of each participant...before the student

fails. Therefore, I do not see how the changes in the rules would require a significant practice change for our special educators.

The Rule changes also align with the intent of Act 173. The 4 main goals of Act 173, as they relate to services provided to all students who require additional support are:

- Effectiveness of services
- Availability of services
- Equity of services
- Supervisory Union compliance with IDEA and State law

The Vermont Board of Education voted to approve the Rule changes so that Vermont Rules and Regulations aligned with existing Federal IDEA laws and, more importantly, to ensure a free and appropriate education to ALL students with disabilities. Lastly, they approved the Rule changes so that Vermont could ensure the goals of Act 173 are implemented effectively.

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.” To delay the implementation of rules 2362 and 2362.2.5 is not only a violation of student rights to equal education access but is in my opinion, unnecessary. The special education process has existed in the federal IDEA 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 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 disabilities be retained.

Thank you for your time,  
Jamie Crenshaw