



March 30, 2022

Testimony to the Senate Education Committee re: H.716

Thank you for inviting Vermont Family Network (VFN) to testify today on H 716. VFN is the federally designated Parent Training and Information (PTI) Center in Vermont. PTIs are required by the Individuals with Disabilities Education Act (IDEA) and exist in every state. We have been supporting families of children with disabilities for more than 30 years! Our Family Support program operates a helpline where we respond to families who call us when they have concerns and questions about their child, from early learning through transition to adulthood.

Special education eligibility and evaluation has been the primary reason for many of our helpline calls. I submitted written testimony to this committee last week and will not duplicate that today. I will merely repeat that VFN opposes any implementation delay of the 2360 Rules regarding adverse effect and specific learning disabilities. I hope to proffer some additional insight today.

In April 2015, the Agency of Education (AOE) convened a stakeholder group “to inform and review a guidance document that will provide greater consistency across the state and provide interpretations from the AOE for areas not explicitly identified and generally misapplied within the current Adverse Effect rule.” This was in acknowledgement that schools had struggled with interpreting and applying adverse effect for many years. In addition, when IDEA was reauthorized at the federal level in 2004, there was clarification that educational performance consists of both academic and functional performance - but the Vermont Special Education Rules only listed academic skill areas when considering eligibility for special education. When the state rules implementing the 2004 changes were being promulgated 18 years ago, advocates and families asked to address the adverse effect criterion. We were told that there was insufficient time to address this, and that there would opportunity to do so at a later point. Nothing happened. The Vermont rules were revised again in 2009 and in 2012 - ten years ago. Again, we asked to address concerns about the adverse effect criterion. Again, we were told there was insufficient time and were promised an opportunity to address adverse effect after that round of rule revisions were completed. Nothing happened. Without the needed Rule changes, the stakeholder group of 2015, of which VFN was a member, worked into 2016, to develop guidance

and training so that special education teams would consider the effects of functional deficits on academic skills when determining special education eligibility. This, in effect, made determining special education eligibility more convoluted.

Removing the current operational definition of adverse effect has the potential to greatly simplify the eligibility process for educators; it will bring Vermont into conformance with the federal definition of education performance from the 2004 IDEA Reauthorization; it will shift the focus onto the third gate of special education eligibility, which is to assess child's need for services - this will help children.

Situations we know of from families whose children were not considered eligible for special education services under the current definition of adverse effect:

“Teachers at the school tell me B is too bright to qualify for special education. She has no friends and I see her not participating appropriately or even at all during circle time; sometimes she sits outside the group paying attention to a completely unrelated object. Even in group projects, the other children ignore her suggestions. She often seems confused by the activity going on in the classroom around her and doesn't understand what to do.”

“I get called 2-3 times a week to pick up C from school for all sorts of behavior issues. Sometimes he defies the teacher, or he disrupts the class by being loud or distracts the other students. I'm starting to think his teacher hates him and uses the first opportunity to send him home. I can't keep my job if I have to leave so often to bring him home. Yet when I ask the school for help, they say he is too bright to qualify for special education.”

We often hear from parents that they are discouraged from requesting a special education evaluation because their children are “too smart.” Without social skills instruction or a behavior plan, children's communication skills and behavior can continue to deteriorate until they fail their academic classes through their inability to access their education, thereby finally qualifying for special education. But we don't want our kids to have to fail over and over again, before receiving help.

Vermont has one of the highest rates of students who qualify for special education in the “Emotional Disturbance” disability category. One of the possible reasons for this is when an underlying learning disability is not diagnosed and remediated, the child exhibits behavioral challenges through embarrassment and frustration. They then qualify for special education, but a behavior plan is not a substitute for appropriate instruction. Earlier identification through implementation of the new Rules will get our students the help they need in a timelier fashion.

Informal refusals to evaluate are another barrier many families face. A school may report that they have processed all the parent requests for special education evaluations in a timely fashion, resulting in almost all the children qualifying and receiving special education services. What we have heard repeatedly, are the parents who are told orally that their children will not qualify and that they should not bother to request an evaluation. If a parent does not submit a request for a special evaluation in writing to the appropriate school administrator, there is no record of one being requested.

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. In 2009, VFN, in partnership with AOE (then the DOE), developed a booklet, entitled [Response to Intervention: A Guide for Parents](#). This was to help parents' understanding of RTI so they could work in partnership with schools. This was 13 years ago.

Children with disabilities have been disproportionately affected by the pandemic. More than ever, our children need early identification and intervention. They have already suffered through two years of disrupted schooling. 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. We ask that you implement the 2360 Rules in their original timeframe.

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