VCSEA

Vermont Council of Special Education Administrators

Leadership for the education of children with disabilities.

To: The Vermont Senate Education Committee
From: Mary Lundeen, Past-President and Jessica Spencer, President-Elect
Date: March 18, 2022
Re: House Education Miscellaneous Bill H.716: Act 173 Funding and
            Delay Of Special Education Rules 2362 and 2362.2.5

The Vermont Council of Special Education Administrators (VCSEA) is in support of the House Education Miscellaneous Bill H.716.

VCSEA supports the 2360 rule changes, but the current timeline for the implementation of these changes on July 1st, specifically regarding Specific Learning Disability (SLD) identification (Rule 2362.2.5) and Adverse Effect (Rule 2362), is not reasonable. **Simply, Vermont School Districts are not ready to implement such complex rule changes within 3 months without a comprehensive, year long training provided by the Vermont Agency of Education**. Our testimony before the House Education Committee, in February 2022, was focused on providing the committee with an understanding of how schools determine eligibility for a Specific Learning Disability and Adverse Effect, and why the new rule changes necessitate a one year delay.

Specific Learning Disability (SLD) identification is defined based on building a body of evidence that addresses the following:
1. The performance in one or more academic skills areas is weak despite attempts at delivering high quality instruction. (Unexpected Underachievement)
2. The performance is not primarily attributed to another learning need such as visual, hearing, intellectual, social emotional, or of an environmental impact (Exclusionary Factors)
3. The performance in one or more cognitive abilities and/or neuropsychological processes is weak or deficient as evidenced by multiple sources. (Cognitive Ability)
4. The performance between cognitive strengths and cognitive and academic weaknesses is not in alignment (Discrepant)
5. The performance is consistent in daily academic activities that cannot be remediated or accommodated otherwise. (Impact- Adverse Effect)

Federally, the three methods of SLD identification are the Discrepancy Model, Response to Intervention, or an Alternate Research-based Approach (Patterns of Strengths and Weaknesses). Currently, Vermont uses a discrepancy model where we use a scoring software to input cognitive scores and compare them to

achievement scores. If the number falls 1.5 standard deviations or 22 points on a one hundred point scale in an academic area the student could be eligible for special education services under the category of SLD. The discrepancy model is insufficient because it doesn't accurately differentiate students with learning disabilities from students who are low achievers. It is based on the fact that IQ can be a sole predictor of achievement, it does not identify the area of processing deficit, and it doesn't inform intervention. In short, it is adequate, but it doesn't give the whole picture. In Vermont, we have compensated for this by using adverse effect in making informed decisions around SLD eligibility. The new rule changes will move the state of Vermont away from a discrepancy model and into either an RTI or Alternative Research-Based Approach or a hybrid approach which will no longer require an adverse effect section for eligibility.

VCSEA supports this rule change because it will allow school teams and families to have a deeper discussion around what instruction has worked, what interventions have been tried, and areas where growth is not demonstrated as expected. That will then prompt the question," WHY"? Why is the student currently experiencing underachievement in an academic skill area that doesn't match the rest of his/her performance, and do they have a SLD? (Unexpected Underachievement)

In order to answer yes or no, school districts across the state will need a high level of professional development in order to analyze and interpret scores, compare them to students' profiles, and build a body of evidence to collectively answer what is working, what is not working, and why. This level of analysis is not used in a discrepancy model and therefore training for Vermont educators has not occurred under the current rules. As a state, we need time for robust, comprehensive training, peer practice, and a way to calibrate our understanding of the new approach.

Currently, adverse effect in Vermont is defined as:
- The student is functioning significantly below grade norms compared to grade peers in one or more of the basic skills due to his/her disability.
- Significantly below grade norms means the 15th percentile or below, or a 1.0 standard deviation or more below the mean on at least 3 of 6 measures of school performance over a period of time.
- A Train the Trainer model was developed by the Vermont Agency of Education and various stakeholders many years ago to provide professional development to school personnel in order to ensure that the rule was implemented properly. Schools were required to train new personnel each year. Since that time, this has become a part of cyclic monitoring.

The new rule change will define adverse effect more broadly.
- Adverse effect will not be required for the disability categories of Deaf-Blindness and Specific Learning Disability (SLD).
- Impact does not need to be substantial, significant or marked.
- The team must identify areas of adverse effect in the basic skill areas using a range of diagnostic and performance data.   This includes academic and nonacademic aspects of the child's functioning.
- The team will document evidence that scientific, research-based interventions have been implemented with fidelity.

- The team will substantiate that the educational deficiencies persist or will persist over time in spite of specific alternative strategies that are provided within the general education setting.
- Functional Skills has been added as a basic skill and includes a very broad definition that lacks clarity.

As with the rule change for Specific Learning Disability, this change to adverse effect will require comprehensive, robust professional training for Vermont educators that includes opportunities for peer practice and calibration to ensure that the rule is being implemented properly and consistently across the state.

In summary, without a delay, the ambiguity surrounding the new rule changes will result in each district creating their own process for determining a specific learning disability and adverse effect. Special education eligibility can at times be litigious. Currently, the lack of training related to these new rule changes will make the special education evaluation process, which is already very detailed and complicated, more confusing and frustrating for parents and families. Vermont schools have a responsibility to have well trained special education staff to carry out the requirements of the Individuals with Disabilities Education Act (IDEA). Without the proper training, our schools will struggle with this federal requirement. A delay of one year will provide the necessary time needed to train the field.