



November 19, 2020

John Carroll, Chair
Vermont State Board of Education
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In re: Public Comment to the State Board of Education on the Special Education Rules

Dear Chairman Carroll and Members of the Board of Education:

We write as the Vermont Special Education Advisory Panel (SEAP) to provide comment on the proposed Rule 1300 series, and the proposed changes to the Rule 2360 series. The Vermont SEAP fulfills the state's IDEA B requirement to have a State Advisory Panel made up of a diverse group of stakeholders with an interest in excellent provision of special education and related services to children with disabilities in the state. We include parents of children with disabilities, individuals with disabilities, teachers, special educators, special education administrators, related services providers, and other stakeholders interested in ensuring that Vermont provides high quality special education to children with disabilities.

We provide the following additional comments:

Placement

We agree with the goals of Act 173 to incorporate students with disabilities, including students with significant needs or low incidence disabilities, into general education classrooms as much as is possible where appropriate. This may require increasing access to resources and supports to build capacity to enable participation in a general education environment. The rules should ensure that more efforts can be made to ensure students have access to general education and peers.

However, we have two areas of concern regarding placement. The first, is that the current state rules narrowing of the term "placement" to exclude the *type* of placement along the continuum of placements. The federal regulations conceive of placement not simply as the services and supports a student needs, but also the type of setting; it is for this reason that specific types of locations are identified (regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions). Therefore, the question of which *type* of placement is an IEP team decision.

The second is a pattern of selecting a specific site and then determining what services and supports will be provided, rather than, as the rules intend, identifying student strengths and needs, identifying goals and objectives, and identifying services and supports needed, and using this information to then select a specific site. Therefore, we recommend an amendment to the rules to make clear the order of decision making IEP teams need to use.

To ensure consistency with federal law, the SEAP recommends the following amendment:

Placements (34 CFR § 300.116),(34 CFR 300.115)

Amend to comport with 300.115, and 300.116:

(a) The IEP team shall determine the educational placement for the child given the following:

(1) Educational placement refers to the provision of special education and related services and the appropriate selection of a type of placement on the continuum of alternative placements, rather than a specific site;

(2) If the IEP team is unable to reach consensus, then the LEA determines the educational placement, including the type of placement along the continuum of alternative placements.

(3) The LEA determines specific site of the educational setting, such as the specific classroom or specific school, after discussion of potential options with the IEP team.

We also recommend addition of a new section (c):

(c) Before teams consider a placement out of the home public school, the team needs to document (i) efforts to provide special education, supplementary services and related services in the home public school environment, and (ii) engage in data collection that demonstrates need for another placement.

We further recommend that section 2363.6, Development, Review, and Revision of IEP be amended to create a new subsection (e) to state:

In the development, review, or revision of an IEP, the IEP must first address sections (a)-(c) of this rule, and then must review the continuum of placements, identify the type of placement the student needs based on the information documented in development or review of the information addressed in section (a)-(c) of this rule, and then select the specific site where the educational services will provided in the appropriate placement along the continuum of alternative placements.

This is especially important as Act 173 is implemented so that students access general education if appropriate, but not constrained if inappropriate.

Adverse Effect

Adverse Effect was another area of significant discussion. The Adverse Effect rule is applied inconsistently across the state. Although additional training has been provided and continues to be required around functional performance, it has helped in only some districts, and it is also inconsistently applied.

In addition, the rule does not provide for adverse effect to be found in areas of social and emotional learning, or functional skills, which excludes students with disabilities such as autism spectrum disorder who are very capable in areas of reading, writing, and mathematics, but need specialized instruction in social skills, and functional skills.

In the federal rules, most, but not all disability categories, within the definition of “child with a disability” (300.8) contain an element that the disability has an adverse effect on educational performance. The federal rules do not require a demonstration of adverse effect for the categories of Deaf-Blindness, or Specific Learning Disability. The federal rules do not, moreover, require that the adverse effect be demonstrated as prescriptively as is currently required by the Vermont rules, or only in the existing categories of Basic Skills Areas in the Vermont rules.

We recommend:

(1) That the current method of determining whether adverse effect exist be eliminated from the rules, by striking Section 2362(d), and replacing it with the following:

(d) The EPT must identify areas of adverse effect due to disability in the basic skills areas using a range of diagnostic and performance data appropriate to the student where the disability category requires a finding of adverse effect. Determination of adverse effect must consider not only impact on basic skills areas, but should also be aligned to the proficiencies expected of all Vermont students prior to graduation.

(2) That the Basic Skills Areas in section 2362(g) be expanded to include functional skills, and social and emotional skills.

(3) That, to align with IDEA, the rules be amended in both the definitions section and the eligibility section to make clear that there is no adverse effect eligibility criteria for the disability categories of Deaf-Blindness and Specific Learning Disability.

These changes will allow, consistent with the purpose of Act 173, to refocus Evaluation and Planning Team meetings on the need for special education, and what other services and supports are needed to allow children with disabilities to make progress in their schools.

Additional Procedures for Identifying Children with Specific Learning Disabilities

In addition to removing the adverse effect eligibility criteria for Deaf-Blindness and Specific Learning Disabilities, the SEAP recommends removing Section 2362.2.5 *Additional Procedures for Identifying Children with Specific Learning Disabilities* which requires a student exhibit a discrepancy of 1.5 standard deviations or greater between ability and expected levels of performance in one or more of the basic skill areas.

Retaining this additional criteria may be viewed as a violation of the IDEA in two ways. First, although it is presented as one of two options for determining the existence of a Specific Learning Disability, in reality, the SEAP is aware of only one school in the state that has an

approved Response to Intervention system that allows determination of an SLD without the use of the discrepancy model. Everywhere else in the state, this is, functionally, the only method for determining whether a child has an SLD, in violation of the IDEA, which prohibits requiring use of the discrepancy model (section 300.307(a)(1)).

Second, practically, it denies a child with specific learning disabilities the right to receive early intervention under IDEA. This is also inconsistent with the purposes of Act 173. According to the eligibility criteria under IDEA, children found to have specific learning disabilities, aged three through nine, should qualify for special education and related services if they are experiencing delays and are not developing certain skills within the expected age range. Furthermore, requiring a student to exhibit a discrepancy of 1.5 standard deviation or greater before they can be determined eligible for special education services is essentially obstructing and delaying early intervention until there is proof of failure. This is referred to as the wait-to-fail methodology and it can have devastating effects on the educational opportunities and the future opportunities of children with specific learning disabilities. Not only is the standard deviation eligibility criteria a wait to fail methodology but it also conflicts with the intent of the Every Student Succeeds Act and Title 16 V.S.A. §2903 *Preventing early school failure; reading instruction* - both of which share the goal of ensuring all students learn to read by the end of third grade. Students with specific learning disabilities, who are denied interventions, will be left behind at the beginning of their education because they do not possess a strong foundation in reading.

The inability to read creates an academic domino effect because the majority of the curriculum is taught by reading. A gap between the student and their peers widens with each passing year an LEA fails to provide intervention. As the gap increases, students' self-esteem decreases. They begin to feel frustrated, anxious, and angry. Their emotions all center on their inability to meet expectations. As research indicates, when a child feels inadequate, the chances of behavior issues increase, thus requiring additional services, which in turn incurs additional costs. Not providing early intervention is significant in terms of the emotional and social fall-out for students, as well as the increased long-term special education costs to taxpayers. Research has found that "90% of children with reading difficulties will achieve grade level in reading if they receive help in the 1st grade. 75% of children whose help is delayed to age 9 or later continue to struggle throughout their school career." (Vellutino, Scanton, Sipay, Small, Pratt, Chen & Denckla, 1996).

Parent Participation

The rights of parents to be treated as equal members of EPT and IEP teams, to have notice of meetings, to participate fully in meetings, to have access to student records, to be able to pursue dispute resolution measures if needed, are established throughout the rules. The SEAP recommends the following changes to the rules, to better ensure that these rights can be fully exercised, which will, further, support the second MTSS framework, where the second element is effective collaboration.

New Parent Concerns/Communication Element of IEP Needed

In order to make the IEP drafting process more accessible parents and ensure parents have a specific vehicle to express concerns, the SEAP recommends amendment to the rules to require all IEPs to contain a section that allows a parent to express their concerns in their own words. This would be sent home to the parent after an IEP meeting to write or amend an IEP, along with the Form 7a. The rule should further require that the parent has 10 days to complete that section and return it to the school, consistent with the period of time between a proposed change and the implementation date. The purpose of the document would be to facilitate feedback from families to ensure they can express any concerns, and is an avenue to request to reconvene the IEP team.

The SEAP recommends amendment to the rules so that IEP meeting agendas need to include time to explain the form and summarize the parents' rights.

We believe this change will improve team communication and reduce the need to pursue mediation, an Administrative Complaint or Due Process to resolve issues where consensus can be achieved.

Amendments to Rule 2363.4 Needed

The SEAP also recommends that Rule 2363.4 be amended as follows:

Amend section (a)(2): Scheduling the meeting at a mutually agreed upon time and place, and for a duration adequate to address all agenda items.

Add section (a)(3): Offering, at least five days prior to an IEP meeting, copies of all documents that will be considered at the IEP meeting including, but not limited to, IEP goals and objectives progress reports and underlying data, and relevant school-wide progress monitoring data.

Add section (a)(4): Soliciting agenda items from the parent prior to the meeting.

Add to section (c): or providing reasonable accommodations to parents with disabilities. Examples include: an opportunity for documents to be explained in advance of the meeting to a parent with a learning disability, or providing enlarged versions of documents for a parent with a visual impairment.

Amend 2363.7(b)(1): a description of evaluation procedures, including the specific data that will be used to assess goal progress, using pertinent data to inform the development of appropriate goals and objectives.

Re-evaluation timeline

The SEAP recommends the re-evaluation provisions in rule be amended to provide clarity that an IEP team can agree to begin a re-evaluation process before the three-year period is at an end. If there is new information that is relevant to a child's needs, the IEP or evaluation team needs to convene to consider moving up the three-year re-evaluation date.

Although the rule should currently allow for this, practice varies across the state, and an additional explicit statement would be helpful in ensuring re-evaluations are also completed when needed.

Transition Services and Planning

The SEAP recommends that the rules, in section 2363.7(i) be amended to require the use of the AOE's Graduation Readiness Tool beginning in a student's ninth grade year, and that the student's progress toward achieving elements of the graduation tool be required to be reviewed by the IEP team annually, including, once the student reaches the age of sixteen, alignment with review of progress in the student's transition goals and services. This rule change would have the added benefit of assisting districts, and the state, improve performance on Indicator 13.

Data Collection and Sharing

As identified elsewhere in these comments, we have recommended a new requirement that parents be offered documents that will be considered at IEP meetings at least five days in advance of team meetings. We also recommend that when data is shared, whether at an IEP or EPT meeting, the source of the data ((e.g. teacher observation, criterion-referenced assessment, curriculum-based assessment, nationally-normed individually administered assessment, etc.) needs to be identified and documented.

In addition, when a method (or methods) is selected to measure progress in IEP goals, teams need to ensure, and document, how the method(s) are appropriate to the goal, and to the area(s) of need for the student.

Thank you for your consideration of these comments.

Sincerely,

/s/ Rachel Seelig

Rachel Seelig

Chair, State Advisory Panel (formerly Special Education Advisory Council)

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/ enc (1)

IEP Comment Form

Student:

IEP Date:

Case Manager:

IEP Implementation Date:

We would like to ask you a few questions about your child's IEP meeting that was held on _____ and the IEP document that you have received.

1. Does the IEP reflect the discussion that was held at the IEP meeting? Yes No

If "no" Please explain: _____

2. Are there changes to the IEP that require additional discussion? Yes No

If "yes" Please explain: _____

3. How would you like the school to respond to your concerns?

Phone call from the case manager Yes No

Reconvene IEP team Yes No

Other: _____ Yes No

Please return this form to your Case Manager before the IEP Implementation Date

Parent/Guardian/Surrogate/Adult Student Date
Signature

Date Received in District: _____

Action taken: _____

