

Vermont Agency of Education

Adverse Effect Training 2022

Historical Perspective

- In the early 1990's, Vermont introduced a rule to operationalize the concept of adverse effect. Evaluation and Planning Teams (EPTs) were required to document three measures of educational performance in a basic skills area that fell at or below the 15th percentile or 1.0 standard deviation below the mean of a standardized assessment. For 30 years, Vermont has been the only state to operationalize adverse effect in such a manner.

The New Change Begins...

In July 2022, Vermont will return to an adverse effect definition that matches that of the rest of the nation. Although it will still require a proof of an adverse effect on educational performance in a basic skill area, either academic or functional skill based, the regulation will no longer require three measures of adverse effect that fall into the lowest 15th percentile or minus 1.0 standard deviation from the mean of a standardized assessment.

The Rationale for Change

Rather than wait until students fall into the lowest 15th percentile of their grade level peers, earlier identification can be made, resulting in the provision of more timely and appropriate supports and services for students in need. With this change, the Vermont Agency of Education predicts that the discussion of when and how students most appropriately get their educational and functional skill needs met becomes the focus rather than meeting an operational standard.

Exceptions to the Rule

The new adverse effect rule will require EPTs to continue to document the existence of an adverse effect for at least one basic skill area for a student/child to meet the adverse effect gate for special education eligibility. The exceptions to this rule are the disability categories of Specific Learning Disabled, Deaf-Blind, and Developmentally Delay, where the current federal rules do not require such documentation.

Proof Requirements

The EPT must address each of the basic skill areas identified as a concern in the Evaluation Plan, either in the Adverse Effect section (where at least where one basic skill area demonstrates an adverse effect) or the Need section of the Evaluation Report. Additional documentation of basic skill areas of concern in the Adverse Effect section may prove necessary until either a basic skill area of adverse effect is proven or that all areas of concern in the Evaluation Plan have been addressed, and found unproven, in the Adverse Effect section.

Areas for Documentation

Although the new regulation no longer requires the documentation of three measures of adverse effect for a basic skill area, those measures, such as grades, performance on individual and group assessments, continuous progress monitoring, attendance, observations, clinical judgment from qualified experts, and samples of student work, should continue to be used to substantiate an adverse effect.

Additional Measures of Adverse Effect

Indicators of educational performance can include present and past grades, report cards and reports of progress (social emotional and/or academic), achievement test scores and measures of ongoing classroom performance such as curriculum-based assessment (formative and summative assessments), work samples and data relative to responses to interventions. This information will continue to be provided collaboratively to the EPT by the school's special education and general education staff.

Reevaluation Reminder

If the student is currently performing well, a result of existing supports and services from special education, describe how the EPT has determined that the removal of those special education supports, and services, would adversely impact the student's performance. This can include a history of adverse impact when those services were not provided. Students should never be denied services to prove adverse impact.

Additional Reminders for the EPT

1. Special education is a service, not a placement.
2. IEP goals and objectives should be linked to needs as documented in the Evaluation Report.
3. Evidence presented in the Evaluation Report should be used to assist the IEP Team in programming and, where appropriate, the development of postsecondary transition plans for students.
4. Students found to have a disability, but not an adverse effect nor a need for special education services, must be referred, within a reasonable amount of time, to the building principal and a Section 504 Team meeting convened to discuss the possible need for a Section 504 Plan.

Case Studies from Hearing Officer Decisions – Case Study #1 Student

Facts:

- Student was assessed in 8th grade and found ineligible
- In Student's 9th grade school year, he was diagnosed with ADD
- In 10th grade he received poor grades because he did not turn in homework, was frequently tardy and absent
- In 10th grade he passed both portions of the State required testing
- A 504 Plan was developed for student with only minor accommodations recommended by a private psychologist
- Parents requested an assessment in September of Student's 11th grade year
- Student admitted homework was not a priority and he was late at times because he would lose track of time
- Student loved soccer and was never late for soccer practice
- School District again found student ineligible

Hearing Officer Determination for Student #1

Student #1 the Hearing Officer determined that:

- the student's attention deficit disorder ("ADD") did not adversely affect his educational performance because his motivation was the primary factor behind his failing grades, rather than his ADD
- the student was capable of arriving to class on time and completing his work; but that he refused to do so

Case Study #2 Student

Facts:

- Student was 16 years-old and had Type 1 diabetes
- Student had history of tardiness, absences, failing to turn in homework and long-term assignments throughout elementary and middle school
- In 9th grade Student failed almost all classes
- In previous years general education interventions had been attempted
- Academic testing (WJIII) all in average range
- STAR scores proficient
- Student's doctor provided input that his diabetes affects his concentration because of blood sugar fluctuations
- In 10th grade student passed both sections of the State required testing

Hearing Officer Determination for Student #2

Student #2 the Hearing Officer determined that:

- the student's diabetes adversely affected his educational performance because it caused him to:
 - be absent or tardy from school, and
 - caused him to fail to, or have difficulty with, completing and/or turning in in-class and homework assignments

Case Study #3 Student

Facts:

- Student was a 12-year-old student with ADHD
- Became eligible for special education at 6 years-old under OHI
- Student was performing well in school, receiving all Bs and a C- in math
- School District assessment found that student's academics were in the above average to high average range
- Parents reported difficulty with homework and social skills related to student's ADHD
- STAR Testing in the advanced range
- Parents reported that student would take 4 hours to complete his homework
- Student removed his ADHD medication patch when he went home because it adversely affected his appetite and cause insomnia

Case Study #3 Student Additional Facts

Student #3 Student Additional Facts:

- Assessment demonstrated a discrepancy between parent and teacher ratings on the Conner's Rating Scale, which the assessor did not analyze and explain
- Assessor reported parent input in their report but did not analyze and explain the input
- District wanted to exit student from special education and filed for a due process hearing
- Parents did not agree to the exit from special education

Hearing Officer Determination for Student #3

Student #3 the Hearing Officer found that:

- The student's ADHD adversely affected his educational performance because it prevented the student from:
 - focusing and attending to his work;
 - from timely completing his homework;
and
 - Assessment report did not give proper weight to the above effects of student's ADHD

The Hearing Officer Further Stated...

The Hearing Officer further stated in their decision that:

- the proper and timely completion of homework was an important aspect of the student's ability to access and benefit from his education because homework comprised as much as 25% of his grade in one of his classes
- the student's difficulty focusing and paying attention prevented him from remaining in an advanced math class

Case Study #4 Student

Facts:

- Student is 14 years-old with high-functioning autism, an anxiety disorder, phobias regarding germs, a depressive disorder, and scoliosis of the spinal column
- In 4th grade student moved into the School District and was determined eligible as a Speech/Language Impaired student
- After 30 days, the IEP team in October 2004 found Student no longer needed speech and language services but was eligible under a Specific Learning Disability
- At the beginning of fifth grade, the School District found that the student no longer needed special education and related services to benefit from his education and exited him
- Parents consented to the exit from special education
- Two year later, the School District agreed to assess student at parents' request

Case Student #4 Additional Facts

- Parents were concerned that, despite student's academic success, he had problems including an obsession with perfection and deficient social skills that interfered with his ability to be successful in school and in the community
- Parents informed the School District that they suspected that the student had Asperger's Syndrome
- Student was placed on a Section 504 Plan
- Student was academically successful in all his classes, his speech and language skills were within the average range for his chronological age and development, and he did not demonstrate autistic-like behaviors in two or more areas as required by law
- The School District found him ineligible
- Regional Center found student eligible for services under autism

Case Student #4 Additional Facts (cont.)

Student #4 Student Additional Facts:

- Parents presented the Regional Center assessment to the School District
- District reassessed student and again for the same reasons found ineligible
- Private assessor found student eligible under autism disability
- Parents filed for a due process hearing

Hearing Officer Determination for Student #4

Student #4 the Hearing Officer found that:

- A child is eligible for special education services if an IEP team determines that the child meets one of the educational eligibility categories, and if the IEP team determines that the adverse effects of the disability cannot be corrected without special education and related services; that is, that the degree of impairment "requires instruction, services, or both, which cannot be provided with modification of the regular school program."
- Thus, if Student exhibited any combination of the above autistic-like behaviors during the relevant time frames and the disorder adversely affects his educational performance to the extent that special education is required, Student would meet the eligibility criteria.

Additional Information the Hearing Officer Considered for Case Study #4

In determining adverse effect, the Hearing Officer examined:

- Standardized measures
- Grades over time which were As
- STAR testing which was advanced
- Section 504 accommodations and whether they caused an artificial increase in grades or test scores
- Whether the content of the curriculum was modified in any way by the Section 504 plan
- The student's ability to relate to and interact with his peers

The Hearing Officer Determined

Student #4 the Hearing Officer found that:

- Student did not meet eligibility under autistic-like, and even if he did,
- There was no adverse effect on educational performance, and
- He did not require special education
- Student was not eligible for special education

Considerations for Determining Adverse Effect

- Adverse effect on educational performance may be found when it:
 - is not due to lack of motivation
 - impacts school attendance
 - causes the student to fail to complete, and/or turn-in, class work and homework, and
 - results in difficulty with focusing and/or attending that prevents the student from attending classes and timely completing his homework

Other Tips for Analyzing Adverse Effect

- Examine all forms of academic performance (standardized measures, grades, continuous progress monitoring results, classroom examinations, work samples)
- Work completion issues (homework or classwork) and determine why the work is not being completed
- Truancy issues and absences (why?) and grades
- Disciplinary issues (why?) and effect of educational performance
- Inflation of grades through Section 504 Plan
- Motivation of student

Additional Questions?

Please email the Vermont Agency of Education at AOE.SpecialEd@vermont.gov.

Or contact the Special Education Technical Assistance Line at (802) 828-1256.