

Rule Change: Special Education Definition

November 22, 2021

Today's Objectives

Participants will:

- Review the Special Education rule change on the Special Education Definition – what it is and what has been removed.
 - What is the federal definition of special education?
 - What Vermont rule changes specifically related to a special education definition impacts my LEA?
- Description of Specially Designed Instruction (SDI)
- Who Can Deliver SDI?
- Make connections across Early MTSS and VTmtss, local level supports/structures, and SpEd rule change concerning special education definition.

Special Education (3-21) Rule Changes: Background

- In 2016 AOE commissioned two studies.
 1. UVM Study: Evaluates special education funding models (2016 Act 148 Sec. 3).
 2. DMG Report: Compares current practice to best practices for special education service delivery (2016 Act 148 Sec. 4) in 10 representative Supervisory Unions/Supervisory Districts.
- In 2018, the General Assembly enacted Act 173 that:
 1. Establishes an Advisory group to shape proposed rules and procedures.
 2. Outlines a several-year transition to the new funding system providing time for rule-making, procedure development and professional learning.
 3. Mandates resources to support professional learning in best practices.
- State Board of Education opened the entirety of rule 2360 which resulted in several changes to the Special Education (3-21) Rules.
- The State Board adopted the new Special Education Rule Series 1300 (Special Education Finance) and updated 2360 on May 13, 2021, to be made effective July 1, 2022.

Special Education (3-21) Rule Changes: Special Education Definition

The definition of “special education services”:

In the new rules effective July 1, 2022, the definition of “special education services” (Rule 2360.2.12) will essentially default to the federal definition, with the exception of the co-teaching provision.

Special Education (3-21) Rule Changes: Special Education Definition (1/27)

Federal Rule: Sec. 300.39 Special education

[Statute/Regs Main](#) » [Regulations](#) » [Part B](#) » [Subpart A](#) » Section 300.39
300.39 Special education.

(a) General.

(1) Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including—

(i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

(ii) Instruction in physical education.

(2) Special education includes each of the following, if the services otherwise meet the requirements of paragraph (a)(1) of this section—

(i) Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards;

(ii) Travel training; and

(iii) Vocational education.

Special Education (3-21) Rule Changes: Special Education Definition (2/27)

(b) Individual special education terms defined. The terms in this definition are defined as follows:

(1) At no cost means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.

(2) Physical education means—

(i) The development of—

(A) Physical and motor fitness;

(B) Fundamental motor skills and patterns; and

(C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports); and

(ii) Includes special physical education, adapted physical education, movement education, and motor development.

Special Education (3-21) Rule Changes: Special Education Definition (3/27)

(3) Specially designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction—

(i) To address the unique needs of the child that result from the child's disability; and

(ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.

(4) Travel training means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to—

(i) Develop an awareness of the environment in which they live; and

(ii) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).

(5) Vocational education means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.

Special Education (3-21) Rule Changes: Special Education Definition (4/27)

Vermont SBE Rule 2360.2.12 Special Education Services (34 C.F.R. § 300.39)

- (a) Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and instruction in physical education. Specially designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child's disability, and to ensure access of the child to the general curriculum, so that the child can meet the educational standards within the State that apply to all children.
- (b) Special education includes each of the following, if the services otherwise meets the requirements of subsection (a):
 - (1) Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards;

Special Education (3-21) Rule Changes: Special Education Definition (5/27)

2360.2.12 Special Education Services (34 C.F.R. § 300.39)

- (2) Travel training;
- (3) Vocational education; and
- (4) Co-teaching.
- (c) Individual special education terms defined. The terms in this definition are defined as follows:
 - (1) At no cost means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.
 - (2) Physical education means—
 - (i) The development of—
 - (A) Physical and motor fitness;
 - (B) Fundamental motor skills and patterns; and
 - (C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports); and

Special Education (3-21) Rule Changes: Special Education Definition (6/27)

2360.2.12 Special Education Services (34 C.F.R. § 300.39)

- (ii) Includes special physical education, adapted physical education, movement education, and motor development.
- (3) Travel training means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to—
 - (i) Develop an awareness of the environment in which they live; and
 - (ii) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).
- (4) Vocational education or technical education means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.

Special Education (3-21) Rule Changes: Special Education Definition (7/27)

2360.2.12 Special Education Services (34 C.F.R. § 300.39)

- (5) Co-teaching services is the delivery of special education services in the general education classroom provided jointly by the general education classroom teacher and a special education teacher.
- (i) By selecting the co-teaching services model, the IEP team has determined that there is no compelling reason why the child's instruction cannot be provided jointly in the general education classroom. The general education classroom teacher shall be an active participant in IEP meetings.
- (ii) The general education and special education teachers will review and document each child's progress towards course objectives and IEP goals.
- (iii) Should a progress review at any grading period indicate that a child is in danger of failing a course or is not making satisfactory progress towards IEP goals, the IEP team shall meet immediately to:
 - (A) Determine continued co-teaching services or change of placement, and
 - (B) Revise the IEP as appropriate.
- (iv) In order to offer co-teaching services, the LEA must complete a plan for implementation which includes continuous professional development and submit the plan to the Vermont Agency of Education for approval.

Special Education (3-21) Rule Changes: Special Education Definition (8/27)

2360.2.12 Special Education Services (34 C.F.R. § 300.39)

- (d) To ensure successful post-secondary transition, transition services may be special education, if provided as specially designed instruction, or related services, if required to assist a student to benefit from special education. (1) “Transition services” means a coordinated set of activities for a child with a disability that: (i) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability, and to facilitate the child’s movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

Special Education (3-21) Rule Changes: Special Education Definition (9/27)

2360.2.12 Special Education Services (34 C.F.R. § 300.39)

- (ii) Is based on the individual student's needs, taking into account the student's strengths, preferences, and interests; and includes:
 - (A) Instruction;
 - (B) Related services;
 - (C) Community experiences;
 - (D) The development of employment and other post-school adult living objectives; and
 - (E) If appropriate, acquisition of daily living skills and functional vocational evaluation.

Special Education (3-21) Rule Changes: Special Education Definition (10/27)

What is different? How does this impact us?

Essentially the same, but slightly broader. Emphasis on special education as specially designed instruction.

Vermont Co-teaching requirements remain in place and are not found under the IDEA special education definition.

No changes to Personnel Qualifications (Rule 2360.2.13).

We will rely on the newly amended, federally consistent rule if any actual conflicts arise, since that was the clear intention of the SBE in rulemaking. We don't anticipate that an actual conflict will come up very frequently since the two rules (2360.2.12 and 2362) are defining different things (eligibility vs. services). When in doubt, we will go with the 2360.2.12 language as controlling.

Special Education (3-21) Rule Changes: Special Education Definition (11/27)

What is different? How does this impact us?

The major change is what has been **eliminated** from the Rules regarding funding requirements specific to instructional services, related services and special education administrators! The rules about specific positions qualifying for reimbursement (or not) are deleted from the new rules. The Instructional Services rule (Rule 2366.2.1) has been struck. The understanding is that the rule is intended to be replaced by Rule 1307 in the Census-Based Funding Rules.

Special Education (3-21) Rule Changes: Special Education Definition (12/27)

- **What has been removed in light of a broader definition of special education?**
- ~~2366.2.1 Instructional Services Except as provided under (1) and (2) in (a) below, expenditures for instructional services shall be allowable if required by a student's IEP. The allowable special education costs include: (a) Salaries and benefits of licensed special education teachers including vocational special needs teachers, and instructional aides for the time they carry out special education responsibilities. (1) The allowable cost that an LEA may claim includes a school period or service block during which the above staff member is providing special education services as defined in Rule 2360.2.12 to a group of eight or fewer students, and the majority of the students are receiving the special education services, in accordance with their IEPs.~~

Special Education (3-21) Rule Changes: Special Education Definition (13/27)

- **What has been removed in light of a broader definition of special education?**
- ~~(2) In addition to the time for carrying out special education responsibilities, an LEA may claim up to 20% of an above special education staff member's time, if that the staff spends the additional time performing consultation to assist with the development of and providing instructional services required by: (i) A plan pursuant to Section 504 of the Rehabilitation Act; or (ii) A plan for students who require additional assistance in order to succeed in the general education environment as determined by the Educational Support Team; (b) Salaries and benefits for services of individual aides for the portion of time they carry out special education responsibilities; (c) Contracted services to provide special education instruction to students with disabilities; (d) Student transportation which is required to implement a part of the instructional program for students with disabilities; (e) The portion of non-collaborative tuition of special education programs and excess costs charged by public schools which relate to allowable costs; (f) The collaborative tuition for special education programs charged by public LEAs;~~

Special Education (3-21) Rule Changes: Special Education Definition (14/27)

- **What has been removed in light of a broader definition of special education?**
- ~~(g) Tuition and all reasonable and necessary costs of placement, as defined in Rule 2366.2.5, excluding any general education tuition in an independent school approved for the purpose of providing special education in accordance with 16 V.S.A. §2958(e) and Rule 2228, et seq.; (h) Travel of special education personnel relating to educating students with disabilities as allowed by their local contractual agreement; (i) Special textbooks, workbooks, other classroom supplies and other instructional materials for a student with disabilities to the extent required by a student's IEP; and (j) The reasonable cost of rental, purchase and maintenance of specialized equipment for a student with disabilities required by the IEP and not otherwise available at no cost to the parent through any other sources.~~

Special Education (3-21) Rule Changes: Special Education Definition (15/27)

- **What has been removed in light of a broader definition of special education?**
- ~~2366.2.2 Related Services Expenditures for related services are allowable if: (1) They are for services defined as related services in federal and state law; (2) The expenditure is for a related service required by the student's IEP, including transportation to and from home for students with disabilities who cannot be accommodated by general school bus service; (3) The expenditure is for services provided by personnel beyond those required by the nonspecial education School Quality Standards (e.g. counseling, nursing); and (4) The expenditure is not reimbursed by another source.~~

Special Education (3-21) Rule Changes: Special Education Definition (16/27)

- **What has been removed in light of a broader definition of special education?**
- ~~2366.2.3 Special Education Administration Allowable expenditures for special education administration are as follows: (1) Salary and benefits of special education administrators and support staff for time dedicated to administration of the educational program for students with disabilities. However, if an LEA elects not to hire a special education administrator and is implementing an alternative organizational plan for the provision of special education administration for a given school year, in order for the cost to be considered an allowable expenditure, the plan shall be approved by the Agency of Education. The plan shall include a description of the functions and the responsibilities of the staff assigned to special education administration; the time spent on these functions; and the estimated costs to be allocated to special education administration; (2) Supplies, office expenses and equipment for special education administration; (3) Cost of in-service activities relating to special education up to a maximum amount per year established by the Secretary; (4) Expense of a telephone in a special education classroom; and (5) Advertising expenses in an amount not to exceed \$3,000 annually per LEA.~~

Special Education (3-21) Rule Changes: Special Education Definition (17/27)

What does this elimination/removal mean for districts?

- The rules about specific positions qualifying for reimbursement (or not) are deleted from the new rules.
- Flexibility
- Different considerations for expending funds and allowable costs
- Special Education Definition impacts Series 1300: [Rules for Special Education Finance and Census-Based Funding](#)
 - Adopted by SBE May 13, 2021
 - Effective July 1, 2022

Special Education (3-21) Rule Changes: Special Education Definition (18/27)

What does this elimination/removal mean for districts?

1305.1 Census Block Grant

(a) If an LEA is able to meet its ongoing service requirements under IDEA Part B and Vermont law, census-block funds may be invested in system structures or programs for students with and without disabilities requiring additional supports.

(b) Notwithstanding subsection (a), an LEA is responsible for complying with the maintenance of effort provisions in Rule 1306.

Funding streams subject to determining eligibility toward the Maintenance of Effort (MOE) calculation include:

- Census Block Grants
- Extraordinary Special Education Expenditures Reimbursement
- State-placed Special Education Reimbursement
- Local funds attributed to special education.
- Essential Early Education (EEE) grant also known as Early Childhood Special Education (ECSE)
- Individuals with Disabilities Education Act Part B (IDEA B) Flow Through and PreK Flow Through grants.

Special Education (3-21) Rule Changes: Special Education Definition (19/27)

Fiscal Guidance And Support Topics

October - December 2021

- Census Block Grant Template deployed
- AOE team discussion regarding time study/documentation requirements

January – March 2022

- FY 2023 Time Study Documentation requirements finalized
- Technical Manual for Use and Accounting of IDEA Part B Entitlement Grants draft open for public comment
- Technical Manual for Documenting Maintenance of Effort draft open for public comment

Special Education (3-21) Rule Changes: Special Education Definition (20/27)

Fiscal Guidance And Support Topics

April – June 2022

- Technical Manual for Use and Accounting of IDEA Part B Entitlement Grants final and posted on AOE web
- Technical Manual for Documenting Maintenance of Effort final and posted on AOE web
- AOE guidance for LEA Maintenance of Effort (MOE) timeline and technical support finalized

July 2022

- FY23 Time study/documentation posted to AOE web
- LEA MOE Calculator deployed
- LEA MOE guidance, office hours, technical assistance rolling out

Information forthcoming **Nov. 22 Office Hours** with AOE Program and Finance Specialists and **Spring 2022 Outreach** from AOE Finance

Special Education (3-21) Rule Changes: Special Education Definition (21/27)

What is specially designed instruction? Who can deliver specially designed instruction (SDI)?

- The delivery of specially designed instruction is the core job responsibility of special education teachers. Are there other professionals who can deliver this?

First, let's examine SDI –

- It is planned, organized and meaningful and is delivered in an explicit, intentional and systematic manner.
- It can be provided in any location, including multiple locations during the course of the school day, as long as the location is consistent with the student's IEP and the student's least restrictive environment.
- It directly addresses the goals in the student's IEP, which, in turn, are "sufficiently ambitious" and designed to enable the student to achieve grade-level content standards or close the learning gap.

Special Education (3-21) Rule Changes: Special Education Definition (22/27)

What is specially designed instruction?

- It is specific instruction that is delivered to the student, not differentiated instruction, accommodations, active learning strategies or other activities designed to facilitate learning for all students.
- It is closely monitored to ensure that the intended results, i.e., a reduction in the learning gap, are being achieved.
- It can address any area of individual need including academic, behavioral, social, communication, health and functional.
- It does not involve lowering standards or expectations for the student.

Special Education (3-21) Rule Changes: Special Education Definition (23/27)

What differentiates specially designed instruction from core instruction and supplemental and intensive interventions?

- Specially designed instruction is similar to, different from and inter-related with core instruction and tier two and three interventions in a number of ways.

Generally, specially designed instruction *differs* from core instruction and interventions in the following ways:

- Specially designed instruction is defined and guaranteed by the Individuals with Disabilities Education Act and implemented in accordance with an individualized education program (IEP);
- SDI teaches specific skills a student does not have but needs to access and progress in the general education curriculum;
- SDI is individualized, i.e., it is specific to the student;
- SDI must be delivered by a qualified provider;
- Students who receive SDI need sustained intensive support in order to maintain adequate rates of progress;

Special Education (3-21) Rule Changes: Special Education Definition (24/27)

What differentiates specially designed instruction from core instruction and supplemental and intensive interventions?

- Students who receive SDI may also receive instructional and testing accommodations;
- It is delivered in the student's LRE, which may be a location other than the general education classroom.

Specially designed instruction is similar to core instruction and interventions in these ways:

- It is aligned with the standards and instructional expectations for all students;
- It may be delivered in the general education classroom;
- It may be implemented together with general education strategies such as differentiation, universal design for learning, school-wide positive behavior supports;
- Assessment practices used in general education classrooms such as formative assessment, screening, and progress monitoring are used.

Special Education (3-21) Rule Changes: Special Education Definition (25/27)

Who can deliver SDI?

Certified special education teachers and certified general education teachers with support from special education teachers can work together to align and integrate the specially designed instruction for each student. School-based team members, such as related service providers, can also provide specially designed instruction during the service provided or through the form of co-teaching. An intervention specialist with deep content knowledge and expertise implementing evidence-based interventions is also qualified to provide SDI. A paraprofessional is allowed to provide SDI only when a certified special education teacher designs the SDI and the paraprofessional is under the supervision of the certified special education teacher.

Special Education (3-21) Rule Changes: Special Education Definition (26/27)

Who can deliver SDI? Some terms defined from previous slide:

Intervention specialist – academic, socio-emotional, and behavioral.

School-based team member – specifically mentioned related service providers...BCBA, subject coordinators, guidance, Directors, other interventionists...must be appropriately credentialed in their field.

Define support – a para can **assist** professional teachers in many aspects of SDI, including 1:1 and small group work on goals and making adaptations as approved by the teacher, lesson preparation, data collection, learning strategies, etc. Paraprofessionals **may provide** specially designed instruction to students receiving special education services when a certified special education teacher designs the specially designed instruction and the paraprofessional is under the supervision of the certified special education teacher.

Special Education (3-21) Rule Changes: Special Education Definition (27/27)

Who can deliver SDI?

Define content knowledge - it is written in the context of knowing what intervention or practice to utilize and implement with fidelity as well as the ability to progress monitor performance of the student with a disability.

Always refer to [Licensing Rules](#).

This is how we meet the IDEA requirements to “ensure that personnel . . . are adequately prepared and trained. . . .”

Special Education (3-21) Personnel Policy

- Policy: In implementing this section, the Vermont Agency of Education has a policy that includes a requirement that responsible LEAs in the State take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services under this part to children with disabilities.
- This is not new and is both an IDEA and AOE requirement – this will be a future priority in monitoring as we implement rule changes.

How will the Early MTSS and VTmtss Frameworks Support These Changes?

Ex: Utilizing Data-based Decision Making

- Use disaggregated data to make decisions about specially designed instruction and academic and behavioral supports

Ex: Developing High Quality Instructional Programs

- Specially designed instruction; UDL; differentiated instruction; effective parental communication to support academic progress at home

Ex: Ensuring Effective Assessment Practices

- High quality universal screening; effective and consistent progress monitoring

Ex: Providing Evidence-based Interventions and Supports

- Ensuring fidelity of implementation; addressing academic and behavior goals; informing parents of academic progress

Early MTSS and VTmtss : Essential Questions for Student Supports

Your Early MTSS and VTmtss frameworks should inform and improve your ability to address the following questions:

1. How are students who need additional supports identified?
2. How are supports for those students identified?
3. How are supports being delivered?
4. How is student progress being monitored?

Implementing Rule Changes Locally

These are the school and LEA-level supports and structures that should be directly engaged in that work:

- General Education classroom instruction
- Evidence Based Practices/Interventions
- Public and Private Prekindergarten Education classroom
- Pyramid Model Practices
- Educational Support Teams (EST)
- Evaluation Planning Team (EPT)
- Individualized Education Programs (IEP) teams
- Response to Intervention (RTI)
- Coordinated and Standards-Aligned Curriculum
- Needs-Based Professional Learning (NBPD)
- Local Comprehensive Assessment Systems (LCAS)
- Positive Behavioral Interventions and Supports (PBIS)
- Section 504

Early MTSS and VTmtss Frameworks (2)

Existing local Support Systems....

...are evaluated through an Early and VTmtss lens...

...to become improved and expanded.

...to better support Special Ed rule change work.



- Categories of Rule Changes
- SLD
 - Adverse Effect
 - Functional Skills
 - Goal Writing
 - Parental Input
 - Special Ed Definition
 - Additional ECSE

Contact Information

- Jacqui Kelleher, State Director of Special Education: Jacqui.Kelleher@vermont.gov
- Jen Perry, Special Education Finance: Jennifer.Perry@vermont.gov
- Tracy Watterson, VTmtss Program Manager: Tracy.Watterson@vermont.gov
- Kate Rogers, Early Education Team Manager: Kate.Rogers@vermont.gov