

April 20, 2020

Vermont State Board of Education

This communication is in regard to the Rule 2360 consideration now before the SBE and its public hearings. I speak as the Chair of the Vermont Autism Task Force (VATF), and also as an educational advocate with 19 years of experience who is a member of SPEAC (Special Education Advocates Coalition), a group of public and private advocates convened by the Disability Law Project of the Vermont Legal Aid.

VATF fully and strongly supports the Rule 2360 proposal presented to the SBE by the Disability Law Project of Vermont Legal Aid. I would like to speak specifically to two of its issues in this proposal: 1) the Adverse Effect changes and 2) the requirement that the parent(s) sign their consent to proposed IEPs.

First, some historical background on the issue of the Adverse Effect, Step 2, of special education eligibility. Vermont is the only state in the U.S. that provides SpEd services to students based just on academic deficits criteria, but withholds them from many students with developmental, social, functional, and emotional deficits. Vermont is the only state with such an onerous and discriminatory adverse effect eligibility requirement, as other states assume that a professionally diagnosed disability will have a negative educational impact on such a student; and that therefore the only question of SpEd eligibility is whether or not special educational services are needed to ensure FAPE for that student. Further, educational advocates have been trying to get the Agency of Education to address the negative impact of the current adverse effect rule since, at least, 1997 when the IDEA law was updated and then again in 2004 when the IDEA was reauthorized. Under the reauthorization, it was clear that educational performance is more than academic performance. When the Vermont state rules implementing these changes in the IDEA were promulgated, advocates asked to address the adverse effect criterion and were promised the opportunity to do so at a later date - but that time never came. The same "shuffle shuffle" happened again in 2009 and 2012 when the Vermont rules were again revised. Therefore, a major disparity continued between Vermont's eligibility determination process and the federal IDEA intent (34 C.F.R. # 300.8(c) 2011), as well as the *Vermont Framework of Standards and Learning Opportunities* and the *Common Core Standards* for all students. In other words, Vermont's adverse effect rule is not in compliance with the IDEA; it is a cut-and-paste of the more restrictive 'specific learning disability' requirements of academic disparity to ALL other 12 areas of disability covered in IDEA! And ever since 1997 the reason given for this AoE position was to reduce the cost of special education services by limiting the number of eligible students!! A gross violation of the intent, as well as the spirit, of IDEA.

Since 2013 the VATF has been working in many ways and with several partners to change this adverse effect rule, as many students especially with "high functioning autism" (a descriptive though now out-of-date term) may score well on at least four of the six adverse effect academic

categories but who experience academic challenges needing special education attention, because of functional deficits in managing emotions, relating to peers in team situations, and others that impede their ability to succeed in the mainstream classroom without assistance. These difficulties can include: “an immature inability to manage emotions; unique attention problems requiring ‘redirection’; an unusual learning style demanding hands-on attention in the classroom; . . . persistent interrupting and not responding in a manner inappropriate in the social context in a classroom; meltdowns during unexpected in-school transitions or in a busy sensory stimulating environments; and . . . unexplained repetitive, whole-body movements . . . disruptive to others in the classroom.” (Lisa Lukasik, *Asperger’s Syndrome and Eligibility under the IDEA; Eliminating the Emerging “Failure First” Requirement to Prevent a Good Idea From Going Bad*, 19:2 Va. J.Soc. Policy and L. 252, 255-56 (2012) (citing Tony Atwood, *The Complete Guide to Asperger’s Syndrome* 15(2007)

These and other ‘functional’ difficulties impact on the academic success and thus life-long vocational and personal success of these students on the autism spectrum; as well as many students with ADHD and/or emotional disturbance. The VATF has been involved over the years trying to draw the AoE’s attention to this problem but with no success; which is why we approached the Senate Education Committee in 2015 and the House Education Committee in 2016 to seek legislative action to address this issue. However, various other demands on the legislature intervened to distract these efforts. The present opening of the SpEd rules is finally a meaningful opportunity for Vermont to address the inequities in the AoE adverse effect eligibility criterion.

A second issue addressed in the DLP’s proposed Rule 2360 changes is one that I, as an educational advocate working in both Vermont and New Hampshire, can speak to with 19 years of experience. In sum, New Hampshire (and many of states) require that parents to actually sign a consent page in all IEPs that they either: 1) agree to the IEP as written, 2) disagree, or 3) agree with exceptions. This requirement is a seemingly subtle but powerful one that I can attest to most emphatically, in my advocacy work in New Hampshire in contrast with Vermont. It gives the parents an immense sense of empowerment in the IEP planning process; but not one that is flaunted inappropriately by them. It helps define and implement the spirit of IDEA in giving parents a meaningful and important role in the IEP process; thus enabling and encouraging parents to be better and more effective IEP Team members. This requirement also gives definition and closure to the IEP planning process, and ensures greater compliance from schools and cooperation from parents. The NH regulations also spell out the particular process for resolving any differences. Whereas, in Vermont, the need for identifying the parents’ role and agreement - or not - with the final version of the student’s IEP is only included - perhaps - in the Team meeting minutes. And also without any specific requirement or process for parents’ disagreements, short of the due process legal action. This requirement thus meets the legal as well the spirit of IDEA. It would be a significant game-changer in the IEP planning process, for both school staff and parents, and lead to an even more healthy relationship between the two.