

Cynthia & Mack Gardner-Morse
8197 County Road
Calais, VT 05648-7517
5 June 2020

To: Vermont State Board of Education

Re: State of Vermont Special Education Rules 2360 *Special Education in Vermont*

We (Cynthia and Mack) are parents of three dyslexic children who are now grown and are productively employed taxpayers. Given the severity of their disabilities, this was not a certain outcome, even though each is considered gifted. In our experience, Vermont public schools put up roadblocks to their obtaining timely adequate services. We were fortunate to be in a financial situation that allowed us to pay privately for what scientific research shows their dyslexia needed. With hard work, all three graduated from the University of Vermont, sometimes on Dean's list.

We have spoken with many other families whose children are suspected of (or diagnosed with) specific learning disability (SLD). Diagnosis is always too late (usually middle school – never in kindergarten) and often paid for privately, which is a social equity problem. Our Vermont schools' responses have been disappointing at best, and lead to 32% of Vermont's fourth graders reading at "below Basic" on The Nation's Report Card! Failure to screen children in kindergarten for SLD starts the failure of so many Vermont children to achieve efficient reading. Other problems for dyslexic children follow because they are handicapped by a system that sets them up for failure.

The Board of Education can change these poor outcomes by modifying existing rules to require early identification of children with dyslexia.

We are speaking up so that future Vermont SLD students can receive services early, when scientifically-based structured literacy remediation is most effective and uses the least public funds. Here are our recommendations.

Act 173 is an act to enhance the effectiveness, availability, and equity of services provided to students who require additional support. Act 173 is especially important for our students with the greatest needs – students on Individual Education Plans (IEPs), so it is appropriate that the State Board of Education is reviewing Vermont's Special Education Rules 2360.

Do the current special education rules align with current policy priorities of Response to Intervention (RtI) and Positive Behavioral Interventions and Supports (PBIS) under the umbrella of Multi-Tiered System of Supports (MTSS)? Do the rules represent and support best practices?

RtI grew from efforts to improve special education services, specifically in identifying students who are struggling academically, and to provide early support based on their needs. Instead of

the “wait-to-fail” method for identifying students with learning challenges, in RtI all students are screened regularly.

We have three main concerns with the current State of Vermont Special Education Rules 2360 *Special Education in Vermont*:

I. 2362 Eligibility for Children Ages Six Years through Twenty One (34 CFR §300.306)

(a) A child shall be eligible for special education if:

(2) The disability results in an adverse effect on the child's educational performance in one or more of the basic skill areas as described in subsection (f), below; and

(d) Adverse Effect.

(1) To conclude that a disability has an adverse effect on the student's educational performance, the EPT shall determine and document that, as a result of his or her disability, the student is functioning significantly below grade norms compared to grade peers in one or more of the basic skills defined in Rule 2362(g).

(2) "Significantly below grade norms" means the 15th percentile or below, or a 1.0 standard deviation or more below the mean, or the equivalent, as reflected by performance on at least three of the six following measures of school performance, generally over a period of time:

Recommend deleting the adverse effect eligibility criterion. This is not required by Federal law and Vermont is the only state with such a criterion. This criterion requires a child to demonstrate a significant struggle to learn over a prolonged period of time before services are provided (“wait-to-fail”). This is particularly critical for children with a specific learning disability with an impairment in reading. Reading is taught in kindergarten through third grade. Struggling readers need early intervention.

This requisite period of failing delays intensive interventions that are most effective in kindergarten and first grade (Ref: Wanzek J, Vaughn S. Research-based implications from extensive early reading interventions. *School Psychology Review* 36(4):541-561, 2007). A meta-analysis comparing intervention studies of at least 100 sessions reported larger effect sizes in kindergarten and first grade than in the later grades (Ref: [Torgesen, J. K. Avoiding the devastating downward spiral: The evidence that early intervention prevents reading failure. *American Educator* 28:6–19, 2004](#)).

Dr. Sally Shaywitz states in *Overcoming Dyslexia*, “The human brain is resilient, but there is no question that early intervention and treatment bring about more positive change at a faster pace than an intervention provided to an older child. The sooner a diagnosis is made, the quicker your child can get help, and the more likely you are to prevent secondary blows to her self-esteem.” (Ref.: <https://dyslexia.yale.edu/resources/parents/what-parents-can-do/suspect-dyslexia-act-early/>)

Remediating older children is more expensive and takes longer than instruction in primary school. "... [C]hildren who get off to a poor start in reading rarely catch up. As several studies have now documented, the poor first-grade reader almost invariably continues to be a poor reader (Francis, Shaywitz, Stuebing, Shaywitz & Fletcher, 1996; Torgesen & Burgess, 1998). And the consequences of a slow start in reading become monumental as they accumulate exponentially over time." (Ref.: Torgesen, J. K. Catch them before they fall: Identification and assessment to prevent reading failure in young children. *American Educator* 22:32-39, 1998).

Frustration grows as dyslexic children fall ever further behind their peers. Parents of dyslexic children know the emotional cost of an otherwise normal child failing to grasp what peers do with ease. Financial costs from delaying special education services include treatment of accompanying psychological and medical problems (e.g. depression, anxiety, and psychosomatic conditions related to academic stress).

What are the societal costs? Nationally, 75% of prison inmates are functional illiterate. Dyslexia is so prevalent in prisons that dyslexia screening is a provision in the 2018 Federal criminal justice reform law, First Step Act. Former Governor Howard Dean stated, "The truth is that in our prisons, 85-90% of the inmates are dropouts, most because they never could figure out how to read." (Ref. Wellington, Todd, "Governor Talks Education", *Caledonian Record*, April 1, 1999, p. 1A). "*Figure out how to read?*" Let's not blame the victims! 95% of elementary students, regardless of background, are cognitively capable of learning to read when they receive sufficient direct instruction on the foundational skills of reading.

Let's use special education funds as efficiently as possible: identify early and remediate effectively. Why wait three or more years before we give children access to additional resources essential for improving their reading?

II. 2362.2.5 Additional Procedures for Identifying Children With Specific Learning Disabilities (34 CFR §§300.307-300.311)

(a) In making the determination that a student has a specific learning disability the LEA shall decide whether to use a discrepancy model or a model based on whether the student responds to scientific, research based intervention.

(1) When using a discrepancy model, the EPT shall document that the student exhibits 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.

Recommend deleting the discrepancy model for identification of a specific learning disability. The discrepancy model approach runs counter to IDEA regulations where State rules must not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability. Current policy priorities are the use of Response to Intervention (RtI) under the umbrella of a Multi-Tiered System of Supports (MTSS). Let's support best practice and eliminate the discrepancy model approach, relying

instead on a child's response to scientific, research based intervention (RtI) in rule 2362.2.5 (a) (2).

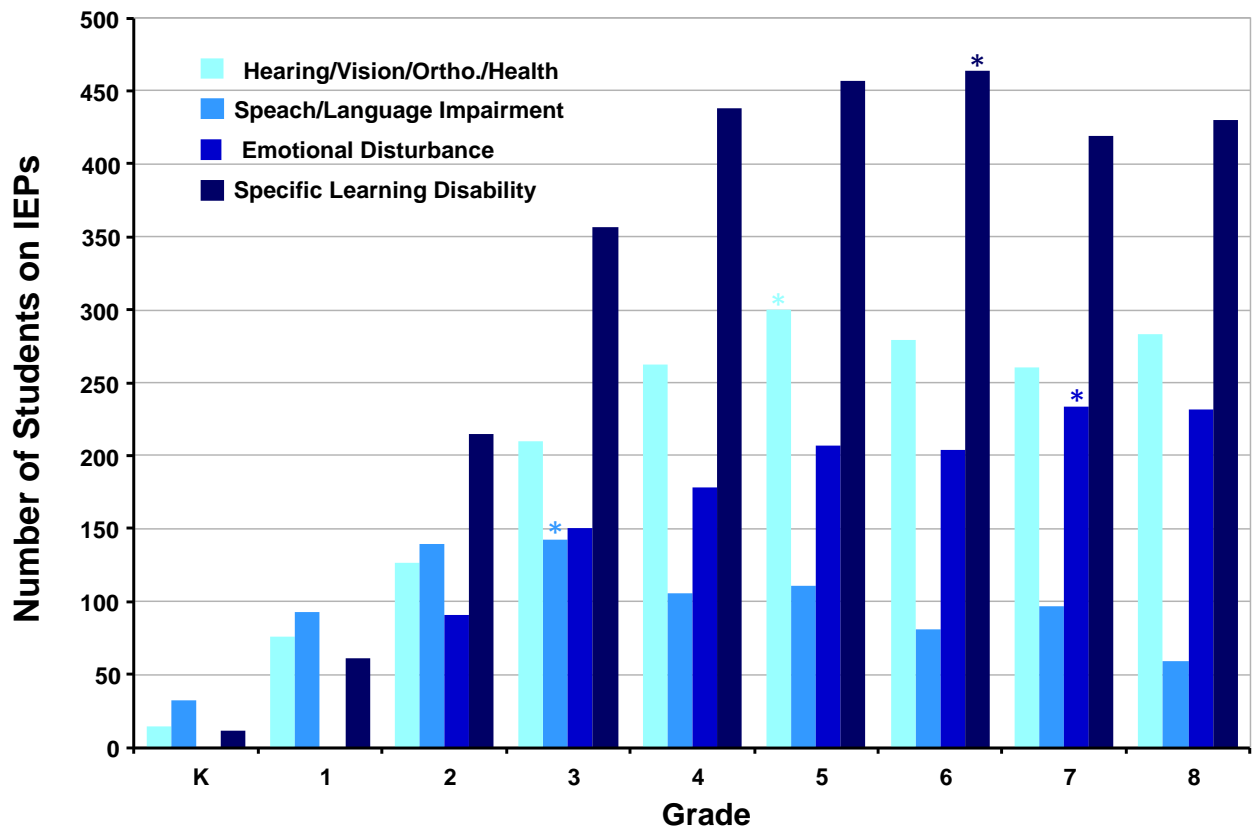
III. 2360.3 Child Find (34 CFR §300.111)

Recommend adding a rule to require Local Education Agencies (LEAs) to do universal screening for specific learning disabilities based on [Vermont Early Learning Standards](#)' Literacy Development's reading foundational skills (Phonological Awareness, Phonics and Fluency) starting in kindergarten and continually monitoring phonological awareness, phonics and fluency progress through at least second grade.

As data from the Vermont Agency of Education (AOE) shows (please see top of next page), LEAs are not identifying and providing services to most children with specific learning disabilities until after second grade. Since LEAs are currently failing in their responsibilities under Child Find, a rule requiring universal screening for specific learning disabilities would ensure children are identified early and provided the necessary resources to be successful. The failure of LEAs to identify SLD children points out the failure of LEAs to implement RtI effectively in the primary grades.

Before presenting specific recommendation for universal screening, let's consider the data for Vermont children on IEPs in elementary schools:

Most SLD students receive an IEP after 2nd Grade as typical students begin to read fluently.



Data source: Vermont AOE, May 2020

The largest disability group is SLD. 85% of SLD students have an impairment in reading. However, the majority of them are not getting support from an IEP until third, fourth and fifth grades, grades when their peers have transitioned from learning to read to reading to learn. Currently, both Child Find and RtI are failing in early identification of even the most deficit SLD students!

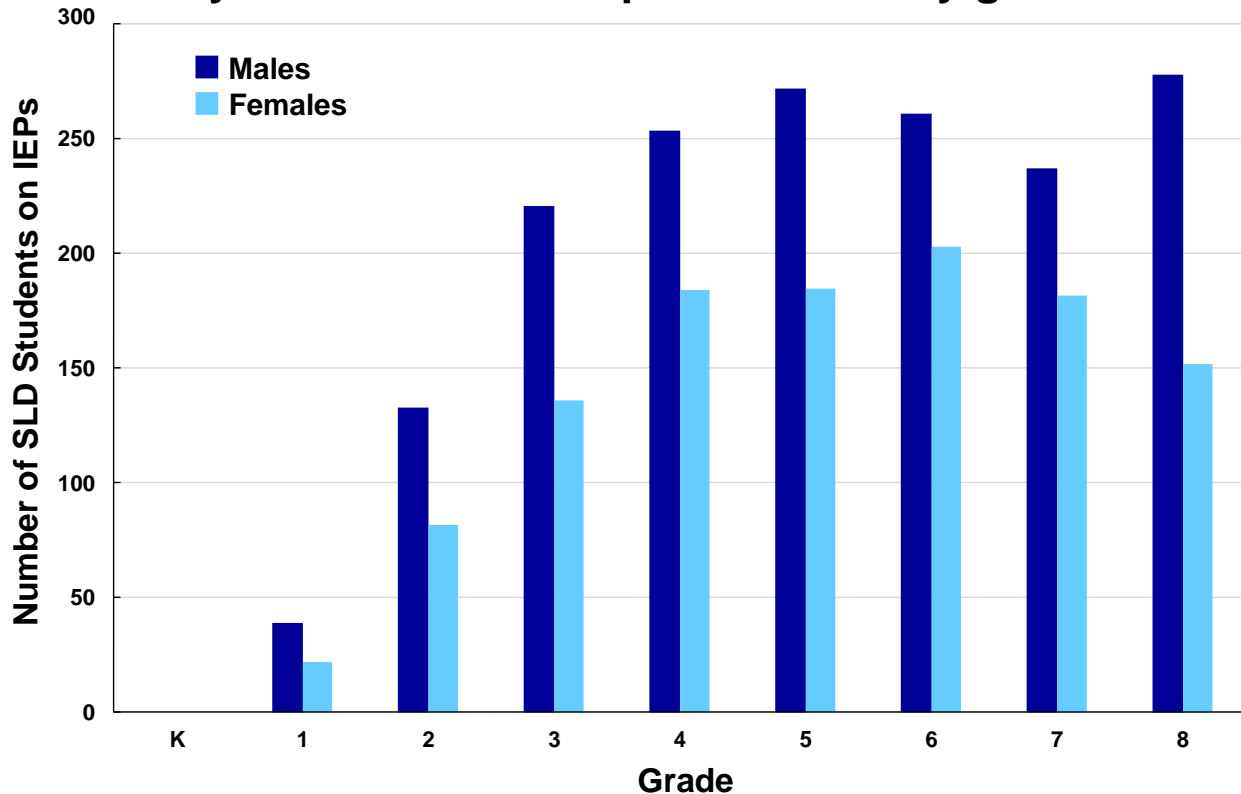
Note that the number of students with a Speech and Language disability peaks in second and third grades (marked with an asterisk). Yet the number of SLD students on IEPs does not peak until sixth grade (marked with an asterisk)! Why are so many SLD students not receiving support until later grades?

What if SLD students were identified and provided services in kindergarten through second grade, before they fell behind their peers?

This data illustrates the importance of implementing universal screening for SLD in kindergarten, first and second grades.

However universal screening is not only a question of early identification, it's also a question of equity. See the bar graph below:

More male than female SLD students are on IEPs yet studies show equal numbers by gender.



Data source: Vermont AOE, May 2020

The bar graph above shows that more male than female SLD children are on IEPs. Yet, studies find no significant difference in the prevalence of dyslexia between male and female children (Ref: See Figure 1, p. 148 in *Dyslexia (specific reading disability)*. Shaywitz SE, Shaywitz BA. *Pediatr Rev* 24(5):147-153, 2003).

Objective universal screening tests will help reduce the bias in the identification of SLD children.

Specific recommendation for a universal screening rule is to add (iv) under rule 2360.3 (2) (iii):
(2) LEAs are responsible for establishing and implementing a comprehensive Child Find system for children and students from birth through twenty-one years of age.

(iv) LEAs shall develop procedures for conducting universal screenings for specific learning disabilities in all children enrolled in kindergarten through second grade. This rule shall not be construed to limit an LEAs screening of children enrolled in pre-

kindergarten or to continue screening children past second grade. Universal screening is a process that includes State approved screening tools and appropriate methods implemented by qualified personnel to identify, at the earliest possible age, children having a specific learning disability. If the screening or other available information indicates a child is suspected of having a specific learning disability, the following must occur:

(A) Notice must be provided to the parent of the results of the screening or other available information that indicates the child is suspected of having a specific learning disability and include in that notice a description of the parent's right to request an initial evaluation at any time.

(B) The child must be referred to the school-based Evaluation Planning Team (EPT) for the development of an initial evaluation as described in Rule 2362.2.1.

Fountas and Pinnell and Lexile Level Literacy assessments are not effective screening tools for this age group. We recommend that the AOE use screening tools based on [Vermont Early Learning Standards](#)' Literacy Development's reading foundational skills (Phonological Awareness, Phonics and Fluency). Other states are using DIBELS Next, Aimsweb, Predictive Assessment of Reading (PAR), and the Texas Primary Reading Inventory (TPRI) as screening tools. The International Dyslexia Association (IDA) has a good review of these screening tools at <https://dyslexiaida.org/universal-screening-k-2-reading/>

Other screening tools (see Appendix A) that are useful in practice (e.g. in RtI) are:

1. PASS (Phonemic awareness – screens current ability to manipulate sounds within words – follow-up with a C-TOPP test is very helpful when PASS score is low),
2. PAP (screens letter names and knowledge of sounds, similar to Wilson screening),
3. Rapid Naming tests,
4. First 100 word list: Sight/Instant or 200 High Frequency words sorted into Regular and Irregular,
5. A nationally-normed reading assessment such as Qualitative Reading Inventory (QRI) or Analytical Reading Inventory (ARI), if appropriate (child can read sight words),
6. Writing test consisting of a 1 minute list of animals, then 5 minute paragraph, if appropriate (child can list some animals),
7. Conversation with parents about family history of dyslexia and background of previous attempts to learn to read (if appropriate), and
8. A brief math screener.

See Dr. Nadine Gaab's "*It's a Myth That Young Children Cannot Be Screened for Dyslexia!*" for more information on the importance of early screening.

We have an additional five important concerns with the current State of Vermont Special Education Rules 2360 *Special Education in Vermont*:

I. 2361.1 Part B Definitions

(3) Assistive Technology device.

Recommend including assistive technology software in the definition. Speech-to-text and text-to-speech software is critical for severe dyslexic children and other children with reading and/or writing disabilities to access their general education curriculum. LEAs should be required to provide children with the necessary hardware (e.g. noise canceling microphone) and training in the use of these complex software tools to maximize their effectiveness. The training in the use of these tools should not wait until the students are transitioning out of high school. Some children may need these assistive technology software tools in early elementary school.

II. 2362.2.1 Initial Evaluations (34 CFR §300.301)

(c) The initial evaluation shall be completed and the report issued within sixty days from either:

Recommend shortening the time for an evaluation to 45 days. Why can initial evaluation be done in 45 days for children under Part C, but take 60 days for Part B? LEAs use the time to delay services to our most needy children. LEAs should also be required to evaluate and develop on IEP for these children even if it requires meetings in the summer. This would ensure that an IEP is in place in the Fall for the child. Valuable time is lost if the evaluation and IEP planning are done at the start of the Fall school year.

III. 2362.2.2 Evaluation Planning Team (EPT) – Membership

(b) The EPT membership shall include:

(6) The parent(s), guardian or educational surrogate parent of the student/child who shall be given meaningful opportunity to contribute information to the development of an evaluation plan,

Recommend including language that explicitly allows other family members, an advocate or person outside of the family to attend and participation in EPT meetings if requested by parent(s), guardian or educational surrogate parent. Parent(s), particularly in lower socioeconomic status, feel uncomfortable or even threatened when in a room full of professional educators. While this person does not need to be a member of the EPT, their support is critical for the effective participation of parent(s). Recommend modifying 2362.2.2 (b) (6) to:

(6) The parent(s), guardian or educational surrogate parent of the student/child who shall be given meaningful opportunity to contribute information to the development of an evaluation plan, and allows the attendance by and otherwise include the participation of:

- (i) Other family members, as requested by the family;
- (ii) An advocate or person outside the family as requested by the family;

IV. 2362.2.4 Evaluation Procedures

(b) In conducting the evaluation, the LEA shall:

(1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent that may assist in determining:

- (i) Whether the child is eligible for special education services; and
- (ii) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);

Recommend a more comprehensive evaluation that includes areas that may not be of concern (e.g. math for a child with a reading disability) and evaluate not only the child's weaknesses but also the child's strength. Many LEAs are only using evaluations to determine eligibility. Too often children are found to have deficits in areas not evaluated resulting in delays in getting effective support to the child. Also, good teaching practice is to teach to a child's strengths. Recommend adding:

- (iii) The child's other potential areas of weakness even if they are not currently of concern (e.g. math for a child with a reading disability); and
- (iv) The child's areas of strengths to assist in planning the teaching strategy for the child;

V. 2363.3 Individualized Education Program Team (34 CFR §300.321)

(a) The LEA shall ensure that the IEP team for each eligible child includes:

- (6) The parent(s), guardian or educational surrogate parent of the child;

Similar to the EPT membership, **recommend including language that explicitly allows other family members, an advocate or person outside of the family to attend and participation in IEP meetings** if requested by parent(s), guardian or educational surrogate parent. While this person does not need to be a member of the IEP team, their support is critical for the effective participation of parent(s). Recommend modifying 2363.3 (a) (6) to:

- (6) The parent(s), guardian or educational surrogate parent of the child; and allows the attendance by and otherwise include the participation of:
 - (i) Other family members, as requested by the family;
 - (ii) An advocate or person outside the family as requested by the family;

Rules set by the Board of Education impact Vermont children educationally, emotionally and financially. The evidence is that early identification reaps a decade of savings and a lifetime of benefits. In requiring early screening, the Board of Education is investing funds wisely by empowering educators, children and parents to improve the lives of our children.

Please let us know if we can provide any additional information for the basis of our recommended rule changes. Thank you for considering our recommendations.

Respectfully submitted,

Cynthia Gardner-Morse

Mack Gardner-Morse