

SPED Rules Proposed Changes

Introduction:

Do not change (ages 3-22) to “three-twenty-one” as proposed by AOE.

Rationale: SPED eligibility lasts through the 21st year; therefore, *until* age 22. Changing the time frame to “21” would make it appear that SPED eligibility ends at the 21st birthday.

2360.1 Statement of Purpose

Add a (c): In 2018 the Vermont Assembly enacted Act 173 with the intent to enhance the effectiveness, availability, and equity of services provided to all students who require additional support in Vermont’s school districts, and directed a shift to a census-based model for funding special education. The purposes of Act 173 are to: (1) enhance delivery of services, (2) provide more flexibility in how the funding can be used, (3) align with the State’s policy priorities of serving students who require additional support across the general and special education service-delivery systems, (4) to facilitate exercise of entitlement to a free and appropriate public education in the least restrictive environment appropriate for eligible students under the IDEA and (5) to simplify administration.

Rationale: The stated goals of Act 173 with regard to Special Education should be made explicit in the Statement of Purpose of the state’s regulations for Special Education. 16 V.S.A. § 2942(2) defines special education: “to the extent required by federal law, specially designed instruction, at no costs to parents or guardian, to meet the unique educational needs of a child with a disability, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions. The term includes ‘related services’ as defined in federal law.”

2360.2 Free Appropriate Public Education

Do not change “ages 3-22” to “three-twenty-one.” [

Rationale: SPED eligibility lasts through the 21st year; therefore, *until* age 22. Changing the time frame to “21” would make it appear that SPED eligibility ends at the 21st birthday. This should apply throughout the rules. If a change is to be made to “twenty-one” every reference to this should be “twenty-one, inclusive of the twenty-first year.”

2360.2.12 Special Education Services

Amend the language of the definition to comport with the federal definition in 34 CFR 300.39 so that the language reads:

(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.

(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.

(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.

Rationale: The state's definition of "special education" is inconsistent with and more restrictive than the IDEA definition of special education. The current language "*that cannot be provided within the school's standard instructional conditions or provided through the school's educational support system,*" should be deleted because it impermissibly narrows the definition of special education by eliminating the use of supplementary aids and services which support students with disabilities and enable them to stay in the classroom and to access the general education curriculum. It is also inconsistent with state law which includes in the definition of special education, "specially designed instruction...including classroom instruction." 16 V.S.A. § 2942(2). Finally, the federal definition defines both travel-training and technical/vocational education, neither of which are defined in state regulation.

Guidance from the U.S. Department of Education in 2012 (*Letter to Chambers*) made clear that the fact that some services "may also be considered 'best teaching practices' or 'part of the district's regular education program' does not preclude those services from meeting the definition of 'special education' or 'related services' and being included in the child's IEP." This guidance went on to state that even if a type of instruction is provided to other children, who may or may not have disabilities, who may or may not be in the child's grade or classroom, or who may or may not be in the building, the service must be provided if it is needed for the particular child, and included on the IEP. By narrowing the definition of what "counts" as special education, essentially ruling out that special education services can be delivered by a general classroom teacher, the Agency's proposed definition not only conflicts with federal law, it conflicts with the intent of Act 173 to provide flexibility to LEAs in providing services to students with disabilities and students who struggle without disabilities.

We have no objection to continuing to include the language regarding co-teaching services and transition services in the current version of the rule. The definition of transition services should include that the transition services become available at age 14, consistent with the WIOA.

2360.2.13 Personnel Qualifications

Add language that the most highly qualified instructor appropriate to meet the student's needs shall provide the specialized instruction to which the student is entitled as outlined in the student's IEP. (Something that allows the literacy specialist to give literacy instruction to a student who needs it, if that person is better qualified to do so than the special educator).

Rationale: Students benefit from instruction by general education teachers, "generalist" special educators, and "specialist" educators (e.g. Orton-Gillingham or Wilson Reading trained instructors). The IDEA regulations leave to the SEA the responsibility to establish and maintain qualifications to ensure personnel are appropriately and adequately trained, states decide how an educator earns full certification a special education teacher, and the IDEA regulations provide for minimum requirements for an alternative route to meet minimum requirements. This flexibility should be used to encourage general education and "specialist" educators to become certified.

Furthermore, students who are eligible for Special Education services do not then become ineligible for non-Special Education services available in the school. Students should not lose access to the highest quality instruction simply because the student needs specialized instruction and related services.

The DMG report highlighted this need, as its first recommendation – that tier 1 instruction needs to meet most needs of most students, and that learners who struggle should receive all instruction from highly skilled teachers. With regard to elementary education, DMG explained “it is essential that students who receive extra time and extra help receive support from a staff with strong pedagogical content knowledge for the subjects they are teaching and have extensive training and aptitude. For students who struggle to read, research indicates that the subject-specific training of the instructor has significant bearing on the student’s likelihood of achieving grade-level mastery.” District Management Group, *Expanding and Strengthening Best Practice Supports for Students Who Struggle: Preliminary Highlights for Discussion* at 27. Similarly, for secondary education, DMG advised “Content-strong experts have the ability to identify missing foundational skills, correct misconceptions, and break down complex ideas in a way that is more accessible for struggling learners.” *Id.* at 35.

2360.2.16 Related Services

In section (d)(4) there is a typo “tansliteration” should be “transliteration.”

In section (d)(4) this section should also, in reference to “transcription services” include CART (Communication Access Real-time Translation). This section should also state that the list is not exhaustive and other services may be created as technology develops that would be included within the category of “Interpreting Services.”

Rationale: The term Related Services is established in federal law. Federal law makes explicit that the services it identifies within its definition are examples, and the list is not exhaustive. The term applies to all services that are necessary to allow a student to access their special education services. With regard to transcription services, it is important to be mindful not only of school’s obligations under the IDEA, but also the ADA requirement for Title II entities, including schools, to meet the effective communication obligation.

2360.3 Child Find

Add a section (h) regarding Child Find and students served in MTSS:

(h): An LEA’s Child Find obligation applies to students it is currently serving in a Multi-Tiered System of Support. If the LEA has reason to believe the child has a disability and is in need of special education and related services, then the student must be located, identified, and evaluated. The student can continue to receive MTSS services while the evaluation is pending.

Rationale: This reinforcement of the Child Find obligation is necessary to make it abundantly clear to schools that providing MTSS services to a student does not relieve the LEA of the Child Find obligation; an affirmative and ongoing requirement. The addition of this language does not add to the Child Find obligation, but does provide clarity on an overlapping topic that has been a problem elsewhere in implementing Census Based Funding.

2360.5.1(a)(3) Part C and CIS/EI Definitions (Consent)

Add a section (v) that incorporates by reference the parental consent/refusal of consent language. See below, section 2365.

2360.5.10.2 Consent for Part B Placement and the Initial Provision of Part B Services

Add a section (c) that incorporates by reference the parental consent/refusal of consent language. See below, section 2365.

2361.1 Part B Definitions

Section (s) “Highly Qualified Special Education Teachers” : See comments on 2360.2.13.

Section (hh) “Special Education Services” should follow precisely the language from the federal definition, as described above regarding section 2360.2.12. The regulations should not have two different definitions of Special Education in sections 2360 and 2361, or between the 2360 rule series and the new 1300 rule series.

2361.2 Essential Early Education (EEE) Eligibility of Children Ages Three Years To The Sixth Birthday

The language should not be changes to “through five” unless it is made clear that this means through the entire fifth year – that is up to the child’s sixth birthday.

Add a section for Parental consent /partial consent/refusal of consent language. See below, section 2365.

Section (d) should not eliminate the 40% delay and 25% delay options for determining eligibility. The 2013 rule amendments it was noted that the 1.5 and 2 standard deviation options for eligibility had been inadvertently omitted in 2010 and were meant to be reinserted in the 2013 rules, but that the criteria was not meant to be changed. EEE eligibility criteria should not be amended. If children are struggling as demonstrated by 40% or 25% delay, services should be provided, consistent with the purpose of Act 173 to better meet the needs of struggling students.

2361.3 Education Placement in the Least Restrictive Environment (LRE)

We support much of the addition to section (a)(2)(iv); however, we believe the allowance for LEA's not to provide services to a child enrolled in out-of-district Universal Pre-K violates the IDEA LRE requirement, by forcing some students out of a fully integrated setting and into a self-contained setting operated by the district in order to receive FAPE. More work needs to be done to align the IEP team decision on appropriate placement in the LRE and access to Universal Pre-K. The IDEA regulations require that placement be in the school the child would attend if nondisabled, and that consideration must be given to any potential harmful effect on the child or on the quality of services they need in deciding placement; these federal requirements are not currently satisfied in the implementation of Universal Pre-K. See 34 C.F.R. 300.116(c)-(d).

2362 Eligibility for Children Ages Six Years through Twenty-One

Amend the eligibility rule to comport with the federal regulations which do not require the acrobatics of Vermont's "Gate 2" question of adverse effect. The definition "child with a disability" (section 300.8) and the determination of eligibility regulation (300.306) do not require this additional gate:

- (a) A child shall be eligible for special education if:
 - (1) He or she has one or more of the disabilities described in Rule 2362.1;
 - (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
 - (3) The student needs special education services to ~~access and~~ benefit from his or her educational program and this support cannot be provided through the educational support system, standard instructional conditions or supplementary aids and services provided in the school.
- (b) The three criteria listed in section (a) above shall also be applied at the time the student receives a re-evaluation to determine eligibility.
- (c) A formal evaluation process, documented in a report as required by Rule 2362.2.6, shall be used to determine whether the above criteria are met.
- (d) Lack of progress in meeting standards, or failure to respond to intervention, in academic and non-academic areas (e.g. functional skills and transferrable skills) may be measured through the LEA's progress monitoring and assessment systems, and must be taken into consideration in determining eligibility.

~~(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:~~
 - ~~(i) Individually administered nationally normed achievement test;~~

- ~~(ii) Normed group administered achievement tests, including nationally normed curriculum-based measures;~~
- ~~(iii) Grades;~~
- ~~(iv) Curriculum-based measures which could include benchmark assessments and continuous progress monitoring outcomes;~~
- ~~(v) Criterion-referenced or group-administered criterion-referenced assessments;~~
- ~~(vi) Student work, language samples or portfolios.~~
- ~~(3) With respect to each basic skill considered, the EPT shall specifically identify in its report:

 - ~~(i) Each type of measure considered by the Team;~~
 - ~~(ii) The finding of the Team, with respect to each measure considered, as to whether and why the measure met (or did not meet) the 15th percentile, -1.0 standard deviation, or equivalent standard, in order to support a finding of adverse effect;~~
 - ~~(i) The specific testing data/scores, student work, and/or education records relied upon by the Team to support its finding under subparagraph (ii) that a measure did or did not meet the standard; and~~
 - ~~(iv) A statement of each basic skill area in which the disability was determined to have an adverse effect, based upon (i)-(iii).~~~~
- (e) A child may not be determined to be eligible under these rules if the determinant factor for that eligibility decision is lack of instruction in reading, including the essential components of reading instruction (phonemic awareness, phonics, fluency including oral reading skills, vocabulary development, reading comprehension strategies), or math, or limited English proficiency; and the child does not otherwise meet the eligibility criteria of these rules.
- (f) If a child has a disability that results in an adverse effect on his or her educational performance in one or more of the basic skills, the EPT shall, in the following order:
 - (1) Consider the interventions, services, and accommodations the student may need, and
 - (2) Determine and provide justification that the student requires specially designed instruction that cannot be provided within the school's standard instructional conditions, or provided through the school's educational support system.
- (g) Basic skill areas, **aligned with the state standards**—
 - (1) Unless otherwise specified in the disability category in these rules, basic skill areas are:
 - (i) Oral expression;
 - (ii) Listening comprehension;
 - (iii) Written expression;
 - (iv) Basic reading skills;
 - (v) Reading comprehension;
 - (vi) Mathematics calculation;
 - (vii) Mathematics reasoning;
 - (viii) Motor Skills
 - (ix) Functional Skills (as defined by 2361.1(17))**
 - (x) Transferrable skills (as defined in the SBOE Adopted Standards)**
 - (2) For an individual with a sensory impairment, one or more comparable basic skills shall be considered to serve as an appropriate substitute for one or more of the above basic skills, for example, Braille skills for basic reading skills.

- (3) The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

Rationale:

The phrase “access and” should not be incorporated here. Access is in sufficient; *Rowley* and *Andrew F.* both require meaningful benefit and a program that enables a child to make progress, reasonable in light of his or her circumstances. If a student cannot access a program, then there is no way to benefit from it. However, adding the word “access” would create the improper impression that access is all that is required.

The Adverse Effect language adds a criteria not found in the federal law. Removing this language allows teams to focus on the two questions that are relevant to an EPT or IEP team – does the child have a disability? Does the child need special education and related services? The Adverse Effect language diverts focus from these questions. It also often leads IEP teams to only consider goals, services and supports in those areas where adverse effect is found, even if the student, because of their disability, also needs services and supports in other areas. The current Adverse Effect approach, moreover, allows teams to either find, or not find, adverse effect depending on how carefully evaluation information is reviewed, depending on what evaluations are used, or even available, and is applied inconsistently across the state despite significant training efforts, creating unequal application of eligibility criteria. Removal of this language therefore aligns with federal law, and allows teams to focus on the needs of the child, and diminishes the administrative burden currently associated with the analysis required to find (or not find) adverse effect.

The addition of functional skills and transferrable skills to the basic skills areas is supported by the existing regulations- basic skills are both academic *and functional*; functional performance is already defined in the regulations as “the acquisition of essential and critical skills needed for children with disabilities to learn specific daily living, personal, social, and employment skills, or the skills need to increase performance and independence at work, in school, in the home, in the community, for leisure time, and for postsecondary and other lifelong opportunities.” The addition of transferrable skills ensures that the areas of consideration for specialized instruction and related services are aligned with the state’s standards and graduation requirements.

2362.2.1 Initial Evaluations

Amend (b)(3) to add the phrase “and notification of parental rights.”

Rationale: If no IEP or EPT meeting has been held, the parent will otherwise be unaware of the mediation, administrative complaint, or due process options to resolve the disagreement over Child Find and initial evaluation.

2362.2.3 Re-Evaluation Requirements

Add a section (b)(3):

(3) Shall adhere to the timeframes described in Rule 2362.2.1 unless extended by mutual written agreement of the student’s parents and other members of the EPT.

Rationale: Re-evaluations should not take *longer* than initial evaluations; under this rule, they will follow at maximum the same time frame as initial evaluations. Although the IDEA does not make this an explicit requirement, the IDEA sets a floor, not a ceiling and the state does have the authority to make the decision that re-evaluations should take only as long as initial evaluations, and certainly not two or three times as long, which has been the case in some districts across the state in recent years. For example, one district convened an EPT for re-evaluation purposes on 9/26/18, the evaluation was not completed until 1/29/19, and no IEP was written until 3/21/19 – an evaluation (125 days) and implementation (51 days) timeline of 176 days. This language applies to comprehensive three-year re-evaluations, and to Independent Educational Evaluations (IEE).

2362.2.4 Evaluation Procedures

Amend section (b)(3)(viii) to include Functional Skills and Transferrable Skills.

The additional of functional skills and transferrable skills to the basic skills areas is supported by the existing regulations- basic skills are both *academic and functional*; functional performance is “the acquisition of essential and critical skills needed for children with disabilities to learn specific daily living, personal, social, and employment skills, or the skills need to increase performance and independence at work, in school, in the home, in the community, for leisure time, and for postsecondary and other lifelong opportunities. This also ensures that the IEP team is aligning its discussion of strengths, needs, and goals, with the Vermont standards.

Add a section (i):

The LEA shall provide parents with copies of each examiner’s evaluation and assessment report(s) at least 5 days prior to the meeting at which the evaluation and assessment report(s) will be discussed.

Rationale: Access to evaluation reports and assessments in advance of the meeting supports the parent in being a full member of the team, with time to review and process the report, formulate questions, and understand the material adequately to be an equal EPT or IEP team member. Providing evaluations ahead of meetings increases compliance with the requirement for parent participation as an equal member by giving all team members the same information in advance. Finally, it increases efficiency for EPT and IEP team meetings because members do not need to waste meeting time on reviewing documents, and can instead come prepared with questions and concerns, and move through the agenda of the meeting effectively.

2362.2.5 Additional Procedures for Identifying Children With Specific Learning Disabilities

Amend subsection (a) to prioritize use of the RTI model:

- (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. ~~The LEA shall use a Response to Intervention Model to assess a student for Specific Learning Disability unless a student demonstrates with existing data that a discrepancy exists.~~

Rationale: In the context of MTSS, if a student is referred for special education evaluation because they have not made progress in the MTSS system, this should be adequate to categorize the student as SLD. Schools should be providing scientific, research-based intervention to students in their MTSS systems. Some students will show a discrepancy in existing data and for them eligibility in this category need not wait for response to intervention data.

NEW SECTION 2362.2.9

2362.2.9 Provision of MTSS Services Pending Evaluation

The initiation of an evaluation for eligibility for special education and related services shall not prevent an LEA from providing MTSS services to the student while the evaluation is pending.

Rationale: This language should re-assure school districts that they can provide assistance to students while the lengthy special education eligibility process is underway. Some LEAs have expressed concern that they will have their hands tied if a parent requests an evaluation. We want to ensure students are getting extra help, while their IDEA eligibility is in process.

2363.3 IEP Team

Amend section (b) to lower the transition age to fourteen (14), the standard set in the WIOA.

Rationale: This change aligns with federal law, availability of federal funds through VocRehab, and is more consistent with Act 77 personalized learning which applies to students under 16 as well.

2363.7 Content of IEP

Amend section (i)(1) to lower the transition age to fourteen (14), the standard set in WIOA.

Rationale: This change aligns with federal law, availability of federal funds through VocRehab, and is more consistent with Act 77 personalized learning which applies to students under 16 as well.

2363.9 Distribution and Explanation of the IEP Document

Further amend (c) to require that the LEA give the parent a copy of the IEP, or amended portions of the IEP, in draft form within five days before any meeting to discuss potential changes to the IEP, as well as in final form within five days of an agreed upon change to the IEP:

(c) The LEA shall give the parent a copy of the student's IEP, or amended portions of the IEP, and shall provide the copy at no cost to the parent. **At a minimum, the parent shall receive a copy of the existing IEP with the Notice of Meeting, and shall also receive a copy of the IEP within five days of any meeting at which a change to the IEP was made.**

Rationale: We support the addition of the "and shall provide the copy" language. However, we believe that more specificity about when it must be provided is important to ensure that parents have access to the existing document before meeting with the IEP team, as well as after changes have been made to the document. The time period is consistent with our proposal for how far in advance evaluation reports should be shared as well.

2364.3 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 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 specific site of the educational placement, such as the specific classroom or specific school.

Rationale: The federal regulations conceive of placement not simply as the services and supports a student needs, but also the physical location; 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.

2365.1.1 (Parental Rights) Notice: Content of Notice

An LEA shall provide written notice to the parent or guardian of a student within a reasonable time **but not less than 14 days** before it proposes to initiate or change, or refuses to initiate or change, a student's identification, evaluation, educational placement or the provision of a free appropriate public education. **The 14 day period can be waived only with written informed consent by the parent.** This written notice shall contain:

Rationale: Current practice across the state is variable as to when prior written notice is provided; including with decisions the LEA is aware the parent does not agree, being implemented before the day, or on the same day as the notice. A 14 day period provides the parent adequate time to decide whether the change is one with which he or she will agree, or, if not, to pursue mediation, administrative complaint, or due process.

2365.1.3 Parental Consent

Parental Consent (2365.1.3.1)

(a) An LEA shall obtain informed, written consent from the parent of a child with a disability prior to:

- (1) Conducting an initial evaluation;
- (2) Initial provision of special education and related services to a child with a disability;
- (3) Annual renewal of the IEP and placement of a child with a disability;
- (4) Determining or changing the disability classification;
- (5) Changing the nature or extent of the special education or special education and related services;
- (6) Conducting a reevaluation;
- (7) Access to public insurance pursuant to 34 CFR 300.154(d); and
- (8) Each time the public agency proposes to access private insurance.

(b) If a parent fails to respond to a request for informed, written consent to any of the actions described in (a)(3), (4), (5), or (6), the LEA shall proceed in accordance with the "Parental Failure to Respond" section 2363.8.3, below.

(c) Parents of children with disabilities shall have 14 days after the sending of written prior notice to sign documents included with the notice to indicate consent, or refusal of consent or partial consent as set forth below.

(d) A public agency shall not use a parent's refusal to consent to one service or activity or request of additional services, or activities to deny the child any other services or activities to which the parent has consented.

(e) When the parent refuses consent to one or more of the proposed services or activities, and/or requests changes to services or activities in the initial proposal, the parent shall specify, in writing, the items that they are refusing or requesting.

(f) Upon receipt of a parent's partial consent, the LEA:

- (1) May schedule a mutually agreeable time and date for an IEP team meeting;

(2) Shall, if requested by the parent, pursuant to Ed 1109.06(b) convene the IEP team to discuss the requested changes and/or additions to the IEP, except as set forth in (3) below:

(3) May refuse to convene the IEP team meeting if it determines that the requested changes and/or additions to the IEP have been addressed at a prior IEP team meeting. In such event, the LEA shall issue a Written Prior Notice explaining why the LEA refuses to convene the meeting.

(g) If a parent refuses consent for a proposed IEP or placement, the child's most recent agreed upon IEP and/or placement shall remain in effect unless the LEA and parent agree otherwise, until the matters are resolved unless and until a party files for due process, in which case the IEP and placement shall be governed by 34 CFR 300.518.

(h) A parent or a public agency may file a due process complaint on any of the matters described in 300.503(a) (1) and (2) and 2365, pursuant to 34 CFR 300.507.

(i) The 14-day time limit shall be extended if the LEA and the parent mutually agree to an extension.

(j) LEAs shall advise the parent in writing of:

(1) The necessity of signing documents which describe actions requiring the parent's consent for the purpose of ensuring the timely provision of appropriate services;

(2) The parent's right to access all of the rights and procedures outlined in this section if the parent disagrees; and

(3) The parent's right to an extension of the 14-day time limit, provided the parent and the LEA mutually agree to such extension.

(k) A copy of any document signed by a parent in which the parent gives consent in writing shall be provided to the parent, and a copy of such document shall also be placed in the child's education records.

Parental Refusal of Consent; Initiation of Due Process Hearing by LEA (2365.1.3.2)

(a) A parent who refuses informed consent to all or part of any change proposed by the LEA shall indicate the refusal in writing within 14 days after the sending of written prior notice, or within the time frame allowed by a mutually agreed-upon extension.

(b) Alternative dispute resolution as provided in 2365 may be requested by either party at any time.

(c) If a parent refuses consent to a proposal included in 2365.1.3.1(a)(1) or (a)(6), the LEA shall have the authority to pursue the initial evaluation or re-evaluation by the initiation of a due process hearing under 2365.

(d) If a parent refuses consent or fails to respond for the initial provision of special education services, the LEA shall not pursue the initial provision of special education services by initiating a due process hearing under 2365.

(e) If at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, pursuant to 34 C.F.R §300.300(b)(4) the LEA:

- (1) Shall not continue to provide special education and related services to the child;
- (2) Shall provide a prior written notice in accordance with 34 C.F.R §300.503 before ceasing the provision of special education and related service;
- (3) Shall not use the mediation or due process procedures to obtain an agreement or ruling that the services may be provided to the child;
- (4) Shall not be considered in violation of the requirement to make FAPE available to the child; and
- (5) Shall not be required to convene the IEP Team meeting or develop an IEP for the child.

(f) A public agency shall not use a parent's refusal to consent to one service or activity to deny the child services, benefits, or activities that the parent has agreed to.

Parental Failure to Respond; Implementation of Changes by LEA (2365.1.3.3)

(a) If a parent fails to respond within 14 days after the sending of written prior notice pursuant to 2365.1.3.1(b), the LEA shall implement its proposed changes if the LEA has taken reasonable measures to obtain informed written consent.

(b) Reasonable measures shall include:

- (1) Documentation of telephone calls to the parent made or attempted and the results of those calls; and
- (2) Copies of correspondence sent to the parent and any responses received, which correspondence shall be sent certified mail, return receipt requested.

(c) The processes provided for in 2365 can be requested by either party at any time.

Rationale: Frequent questions parents have include: "should I sign the IEP? Does that mean I agree with everything in it? If I don't sign it, does that mean my child can't get anything?" There is significant confusion among parents about what consent means, what they have consented to, when their consent is, and is not required, and what it means to revoke consent. These rules, in place in New Hampshire, have been much more successful in making clear to parents and to LEAs what has been consented to, and what has not been consented to, so that agreed upon services can be provided to students, even if adults need additional time to work out disagreement about other services.

Currently, school districts have widely varying processes in terms of implementing informed consent; some rely solely on the Form 7 to give prior written notice, with no process for consent, refusal of consent, or partial consent. Clarity around consent provided by a parent, guardian, or adult student is necessary. Federal law includes multiple provisions related to the

necessity for and ramifications of informed consent, or lack thereof. 20 U.S.C. 1414(D); 34 CFR 300.300. The best and clearest way to establish informed consent, lack of consent, or partial consent is to have a uniform process to follow.

NEW SECTION: Children with Disabilities in Choice School Districts

(a) When a child **who resides in an LEA that does not have a public school**, and is enrolled by a parent in an independent school, the local education agency of the child's resident district shall convene a meeting of the individualized education program (IEP) team and shall invite a representative of the independent school to that meeting. At the meeting, the IEP team shall determine how to ensure the provision of a free and appropriate public education in accordance with the child's IEP. The child's special education and related services shall be provided using any or all of the methods listed below starting with the least restrictive environment:

- (1) The resident district may send staff to the independent school; or
 - (2) The resident district may contract with a service provider to provide the services at the independent school; or
 - (3) The resident district may provide the services at the resident district school; or
 - (4) The resident district may provide the services at the service provider's location; or
 - (5) The resident district may contract with an independent school to provide the services;
- and
- (6) If the child requires transportation to and/or from the independent school before, after, or during the school day in order to receive special education and related services as provided in the IEP, the child's resident district shall provide transportation for the child.

Rationale: Students with disabilities living in Vermont towns who do not have a public school should not be forced out of the same independent schools that welcome their siblings simply because of a disability. Rather, the independent schools and the LEAs should be required to work together to allow students equal access to the education provided to their non-disabled siblings and peers in the same community. This language is adapted from the New Hampshire regulations covering students who have the choice to attend public charter schools.

NEW SECTION: MTSS

The State Educational Agency shall ensure that every Local Educational Agency has adopted policies and procedures for:

- (1) Identifying when a student is in need of the assistance of the LEA's Multi-Tiered System of Supports;
- (2) Establishing benchmark performance for all students who need the assistance of the LEA's Multi-Tiered System of Supports;

- (3) Creating a mechanism and timeframe for monitoring student progress on a regular basis;
- (4) Informing parents when a student is in need of the assistance of the LEA's Multi-Tiered System of Supports, and an option to hold a team meeting about the child;
- (5) Conveying the results of progress monitoring to the student's parents; and
- (6) Determining when a student has not made adequate progress, and when such a student should be referred for evaluation for special education eligibility

The State Educational Agency shall establish a model MTSS policy and procedure that must include best practices to ensure that the state and the local educational agencies Child Find obligation is satisfied.

Rule 1300 Series

1302 Statement of Purpose

Add a new subsection (a) and then renumber subsections to incorporate the Act 173 Purpose language:

- (a) In 2018 the Vermont Assembly enacted Act 173 with the intent to enhance the effectiveness, availability, and equity of services provided to all students who require additional support in Vermont's school districts, and directed a shift to a census-based model of special education. The purposes of Act 173 are to: (1) enhance delivery of services, (2) provide more flexibility in how the funding can be used, (3) align with the State's policy priorities of serving students who require additional support across the general and special education service-delivery systems, (4) to facilitate exercise of entitlement to a free and appropriate public education in the least restrictive environment appropriate for students eligible for an individual educational program under the IDEA and (5) to simplify administration.

Rationale: The legislature made clear the goals of Act 173, and these should be incorporated into the funding regulations as well as the programmatic regulations.

1303 Definitions

The definition of Special Education Services is narrower than the federal law requires. The same definition we recommend be used at 2360.2.12 and 2361.1(hh) should be used verbatim here, or incorporated by reference.

The term "child with a disability" is defined in federal law at 34 CFR 300.8(a) to be a child "evaluated in accordance with 300.304 through 300.311 as having an intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as "emotional

disturbance”), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.” The term “student with a disability should comport with the federal definition; and the process in 2361 and 2362 should comport with the process laid out in 300.304 through 300.311.

Rationale: Definitions should be consistent across programmatic and funding rules, and consistent with federal law.

1304 Maintenance of Effort (MOE)

Section 1304.3 appears to be inconsistent with 34 C.F.R. 300.203(c).

Section 1304.5 (at least the draft that I am looking at) has an incomplete thought “,as determined by the, because the student...” Something should follow the “by the”.

Rationale: The new Rule 1300 series does not address financing in a way that comports with the federal definition of special education or the federal regulation on eligibility. For this reason it is excessively narrow and does not provide the flexibility to LEAs the legislature intended. These changes would allow the rule to comply with the IDEA regulations, including the Maintenance of Effort requirement.

1305 Allowable Expenditures

Amend 1305 so that the definition of allowable expenditures is consistent with the excess cost standard established in the federal regulations at 34 CFR 300.202(a).

Rationale: 34 CFR 300.202(a) Describes what IDEA Part B funds can be used for, and the excess cost requirement. It explains that “an LEA meets the excess cost requirement if it has spent at least a minimum average amount for the education of its children with disabilities before funds under Part B of the Act are used.” However, the allowable expenditures definition has three prongs, not found in 300.202 – the “but for” test, the “exclusivity” test, and the “IEP” test. This is a much narrower definition, and will likely hamstring districts and prevent the flexibility in the use of IDEA Part B funds intended by Act 173.

300.202(a) does not examine each individual service or cost, but looks at the excess over a *minimum average amount*, which requires looking at total spending by the LEA.

1306 Essential Early Education

Amend 1306.3.2 to direct to remove “make reasonable efforts” – LEAs should be required to coordinate with local public and private agencies to provide EEE services so that pre-school age children can remain in their least restrictive environment.

Rationale: 1306.3.2 instructs LEA to make reasonable efforts to coordinate EEE services with local public and private agencies for student three through five (to the sixth birthday) years old. We believe the allowance for LEA's not to provide services to a child enrolled in out-of-district Universal Pre-K violates the IDEA LRE requirement, by forcing some students out of a fully integrated setting and into a self-contained setting operated by the district in order to receive FAPE. More work needs to be done to align the IEP team decision on appropriate placement in the LRE and access to Universal Pre-K.

DRAFT