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MEMORANDUM

TO: Vermont Special Education Administrators, Superintendents, Building Principals, Essential Early Education Coordinators, Vermont Family Network, and Vermont Disability Law Project

FROM: Alice Farrell, Director of Special Education, Vermont Agency of Education

SUBJECT: Guidance to the Newly Adopted 15 Calendar Day Rule for New Referrals (State Rule 2362.2.1(b))

DATE: 11/8/13

During the last round of public comment on the special education rules, the Agency of Education heard from many parents and agencies working with parents that their growing concern with the special education process was the long delay, sometimes up to months, between the time a special education evaluation was requested and a meeting was held to develop an evaluation plan. In researching other states, it was found that many have rules which specifically define a timeline for a response from the Local Education Agency (LEA) upon receipt of a request for a special education evaluation. To this end, Vermont Rules were amended to include a 15 day timeline for schools to respond to an evaluation request from an appropriate source.

It is impossible to legislate for every scenario where a request is submitted for a child or student to undergo an initial special education evaluation. As a result, it is imperative for LEAs to develop internal procedures for accepting referrals. These internal procedures should include a review of the procedures for timeliness in this new rule, and should require prompt handling of any inquiries from parents, staff or other agencies about special education evaluations.

Questions and Answers about the 15-day Rule:

1. Does every inquiry into special education evaluation constitute a “request”?

No. Often parents, staff and/or other agencies may inquire about special education evaluations without an understanding of the nature/purpose of such evaluations. Sometimes, people making such inquiries are unaware that there must be a suspicion of



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disability in order to conduct a special education evaluation. Or, they may be unaware, for example, that screenings and observations are available and suitable for some circumstances. Local procedures should designate by title those to whom such inquiries should be referred, and by whom they should be decided. They should provide for a prompt time line for responding to all such preliminary inquiries by explaining evaluation purposes and procedures and describing any alternative, or perhaps more appropriate, means of addressing the underlying concern. Such inquiries and responses should be documented (see Question #3). The internal procedures should, however, require parental rights in special education to be provided to parents who make such inquiries, regardless of outcome of the discussion.

In writing and implementing internal procedures, and in implementing Rule 2362.2.1, school districts should bear in mind that if parents suspect their child has a disability, they have the right to request a special education evaluation at any time for the purpose of documenting the existence of a disability and to determine if the child/student is eligible for special education services.

2. When does the 15 day clock start?

The date of the request that will appear on the cover page of AOE Form 2 should be the date that the LEA personnel with decision making authority under internal procedures (e.g., special education administrator, building based special educator/team leader) receives the inquiry and decides that the inquiry is a request for a special education evaluation. This would be the case, for example, if, after the inquiry and response described in paragraph 1 above, the entity or person making the inquiry wishes to go forward with a request for a special education evaluation.

Under AOE Rule 2362.2.1, the following can make a request for evaluation: “the parent of a child, or an LEA, or the AOE, or other State agency”. For preschool children, a referral can also be made by the child’s day care provider, with the consent of the parent.

3. What action must occur within the 15 day time frame?

An Evaluation and Planning Team (EPT) must meet to consider the request. If the EPT determines that there is reason to suspect a disability, the process described in Rule 2362.2.4 should begin. Under Rule 2362.2(a)(4), if consensus of the Team is not reached, the LEA representative on the team shall make the final decision.



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If it is determined that there is **not** sufficient information to support a suspicion of disability, the Team may refuse to evaluate the child, or refuse to evaluate the child unless and until information supporting a suspicion of disability is presented to the Team. If the process results in the denial of a request to evaluate, for any reason, a Form 7 or 7a should be issued to the parent, giving notice of the refusal, the reasons for refusal, and the other information required for a prior written notice. Parental rights should also be provided.

The AOE supports that an EPT should be convened to determine if a request for a special education evaluation should be acted upon and an Evaluation Plan developed. However, the AOE is aware that in some districts and supervisory unions, the decision not to move forward with a special education evaluation has been determined by staff without there being an EPT convened due to the fact that information presented clearly does not suggest that a disability is suspected. The use of Form 7 or 7a in such instances is recommended as a means to document that decision, for the parent and the district.

4. Under what circumstances does Rule 2362.2.1(b)(1) apply?

When a student, in the process of an initial evaluation by another LEA , moves from that LEA to a new LEA , so that the evaluation is required to be completed by the new LEA. If the transfer of districts occurs before consent has been signed, the new district must complete the evaluation planning process, if not yet complete, including securing parental consent, before conducting the evaluation. No evaluation should be conducted unless the new district has in hand a signed consent to evaluate that has not been revoked by the parent. Rule 2363.11(c) and (d) spell out evaluation procedures for transfers during the evaluation process. See, AOE Form 9.