

**North Carolina Department of Public Instruction  
Exceptional Children Division**

**Complaint Investigation Final Report  
Case No. 20-043  
November 25, 2020**

The Exceptional Children (EC) Division, North Carolina Department of Public Instruction (NCDPI), has completed the investigation of this complaint filed on September 28, 2020, against the State Education Agency (SEA) - NCDPI. Based upon statements in the complaint, the Exceptional Children Division staff identified the following procedural issues to be investigated:

- Whether the general supervision system of the SEA is aligned with the Individuals with Disabilities Education Improvement Act (IDEA), specifically, to ensure the policies and procedures of a local education agency meet Child Find requirements; and
- Whether the SEA has policies and procedures in place to identify and correct noncompliance with Child Find, specifically the practice of requiring interventions through a multi-tiered system of support (MTSS) before a disability can be suspected.

The findings that follow are drawn from the information in the complaint letter, the SEA review of its system of General Supervision, and a sampling of statewide documents related to the issues. The conclusions of law are drawn from the Individuals with Disabilities Education Improvement Act (IDEA) Amendments of 2004 (20 U.S.C. 1400 et seq.), the IDEA regulations (34 CFR §300), the North Carolina Policies Governing Services for Children with Disabilities (Policies), and Article 9 Chapter 115C of the NC General Statutes. The following report conveys the issues, findings of fact, and conclusions of our investigation of the complaint.

**Background**

This systemic complaint was filed on behalf of the students attending public schools in North Carolina.

**Description of the Complaint**

The complainant alleges that “because of NCDPI’s failure to effectively exercise its general supervisory responsibility to identify and correct noncompliance related to the Districts and LEAs implementation of MTSS/RTI and Child Find requirements, NCDPI is unable to ensure that FAPE has been made available to all eligible children within North Carolina in accordance with 34 CFR § 300.101”.

**Issue One: Whether the general supervision system of the SEA is aligned with the Individuals with Disabilities Education Improvement Act (IDEA), specifically, to ensure the policies and procedures of a local education agency meet Child Find requirements.**

**Issue Two: Whether the SEA has policies and procedures in place to identify and correct noncompliance with Child Find, specifically the practice of requiring interventions through a multi-tiered system of support (MTSS) before a disability can be suspected.**

**Findings of Facts**

1. The NCDPI Exceptional Children Division (ECD) has a system of General Supervision<sup>1</sup> that:

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<sup>1</sup> NCDPI Exceptional Children Division – [General Supervision Position Paper](#)

- Supports practices that improve educational results and functional outcomes for children and youth with disabilities;
  - Uses multiple methods to identify and correct noncompliance as soon as possible but no later than one year after noncompliance is identified; and
  - Utilizes mechanisms to encourage and support improvement and enforce compliance.
2. The NC ECD General Supervision paper is submitted with the State Performance Plan (SPP) and Annual Performance Report (APR) to the Office of Special Education Programs (OSEP) each year.
  3. There are eight components of the General Supervision system:
    - State Performance Plan (SPP) and Annual Performance Report (APR)
    - Policies, Practices, and Procedures
    - Dispute Resolution System
    - Data Collection
    - Monitoring Activities
    - Improvement, Correction, Incentives, and Sanctions
    - Targeted Technical Assistance
    - Fiscal Management

*Policies, Practices and Procedures*

4. North Carolina is required to have policies and procedures that are aligned to support the implementation of IDEA. Article 9 of the state statutes governing special education was revised to align with the requirements of the IDEA. The revised Article 9 was signed into law and became effective July 1, 2006.
5. NC Policies Governing Services for Children with Disabilities (*Policies*) was revised to comply with IDEA 2004. The State Board of Education approved those revisions on November 1, 2007, with the most recent amendment in January 2020. The procedural safeguards notice, Parent Rights and Responsibilities in Special Education: NC Notice of Procedural Safeguards, has undergone revisions to comply with IDEA with the most recent being July 2016. LEAs, to include charter schools, State Operated Programs, and Psychiatric Residential Treatment Facilities (PRTFs), are provided ongoing training and technical assistance or the implementation of the requirements. Additionally, the NCDPI–ECD provides model forms to facilitate implementation of the regulations.
6. The federal regulations<sup>2</sup> require that a State adopt criteria for determining whether a child has a specific learning disability. The criteria adopted by the State:
  - Must not require the use of a severe discrepancy between intellectual ability and achievement;
  - Must permit the use of a process based on the child’s specific response to scientific, research-based intervention; and
  - May permit the use of other alternative research-based procedures.
7. Prior to July 1, 2020, the SEA – NCDPI adopted the three options cited in Fact #6 in its NC *Policies*. Beginning July 1, 2020, the SEA – NCDPI eliminated the discrepancy and alternative procedures in favor of the instructional model of identification using a child’s specific response to scientific, research-based intervention.

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<sup>2</sup> Excerpts from the Federal Regulations - §300.307 Specific learning disabilities

8. The following policies, specifically for Child Find and the issues in this complaint, are included in the NC *Policies*.

- **NC 1501-2.9 Child Find** (excerpts)

- (a) General.

- (1) The LEA must have in effect policies and procedures that ensure that--

- (i) All children with disabilities three through 21 residing in the LEA, including children who are homeless children or are wards of the State, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated;

- (ii) All children with disabilities three through 21 parentally placed in a private school located in the LEA, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; and

- (iii) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services.

- (c) Other children in child find. Child find must also include--

- (1) Children who are suspected of being a child with a disability and in need of special education, even though they are advancing from grade to grade; and

- (2) Highly mobile children, including migrant children.

- (d) Timeline for responding to a notification made by person other than parent or LEA. Within thirty(30)days of receipt of written notification of concerns regarding a child, the LEA shall issue a written response to the child's parent. The response shall include either an explanation of reasons the LEA will not pursue the concerns or a date for a meeting in which the LEA and parent will review existing data and determine whether a referral for consideration of eligibility for special education is necessary. Such meeting must be held within a reasonable time.

- (Authority: 20 U.S.C. 1401(3)); 1412(a)(3); 34 CFR 300.111)

- **NC 1503-3.3 Determining the existence of a specific learning disability**

- (a) The group described in NC 1503-2.6 may determine that a child has a specific learning disability, as defined in NC 1500-2.4(b)(11) if the child meets the criteria described previously in section NC1503-2.5(d)(11).

- (b) To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in NC 1503-2.4 through NC 1503-2.6 -

- (1) Data that demonstrates that prior to, or as a part of the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel;

- (2) Documentation that evidence-based interventions addressing the identified area(s) of concern were delivered by qualified personnel; and

- (3) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting the child's progress and changes in intervention was provided to the child's parents.

- (c) Following a referral from school personnel or a parent, if additional data is sought for determining a child's eligibility, parental consent must be obtained and the public agency must adhere to the time frames described in NC 1503-2.1 and NC 1503-2.3 unless extended by mutual written agreement of the child's parents and a group of qualified professionals, as described in NC 1503-2.6(a)(1) -

- (1) If, prior to a referral, the child has not made adequate progress after an appropriate period of time, when provided instruction as described in paragraphs (b)(1),(b)(2) and (b)(3) of this section; and

(2)Whenever a child is referred for evaluation.  
 (Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6); 34 CFR 300.309)

- **NC 1503-3.5 Specific documentation for the eligibility determination**

- (a)For a child suspected of having a specific learning disability, the documentation of the determination of eligibility, as required in NC 1503-2.7(a)(2), must include a statement of--
- (1)Whether the child has a specific learning disability;
  - (2)The basis for making the determination, including an assurance that the determination has been made in accordance with NC 1503-2.7(c)(1);
  - (3)The relevant academic, functional and behavioral data collected, during the observations of the child in relationship to the child's academic functioning;
  - (4)The educationally relevant medical findings, if any;
  - (5)The determination of the group concerning the effects of Limited English Proficiency or lack of appropriate instruction in reading or math on the child's achievement level;
  - (6)The determination of the group concerning the effects of a visual, hearing, or motor disability; intellectual disability; emotional disability; cultural factors; environmental or economic influences; or loss of instructional time due to factors such as absences, tardies, high transiency rates and disciplinary removals on the child's achievement level;
  - (7)Whether the child is demonstrating either a lack of response to instruction and intervention or is responding at a rate that is insufficient to reduce their risk of failure after an appropriate period of time;
  - (8)Within the assessment of the child's response to evidence-based intervention –
    - (i)The instructional strategies used and the student-centered data collected; and
    - (ii)The documentation that the child's parents were notified about –
      - (A)The State's policies regarding the amount and nature of student performance data collected and the general education services that would be provided;
      - (B)Strategies for increasing the child's rate of learning; and
      - (C)The parent's right to request an evaluation.
- (b)Each group member shall certify in writing whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the group member must submit a separate statement presenting his or her conclusions.  
 (Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6); 34 CFR 300.311)

9. A multi-tiered system of support (MTSS) is not a required framework for school improvement in North Carolina. There is no state statute or NC State Board of Education policy that specifically articulates the requirements for an MTSS or a Response to Intervention/Instruction (RtI) model nor has a specific branded program of a MTSS or RtI been adopted or required statewide.
10. NC *Policies*<sup>3</sup> includes the following definitions and essential components for response to instruction and evidence-based interventions in its revision to the identification of specific learning disabilities in July 2020.
  - Multi-tiered system of support (MTSS) – “MTSS is a multi-tiered framework which promotes school improvement through engaging, evidence-based academic and behavioral practices. MTSS employs a systems approach using data-driven problem-solving to maximize growth for all”.
  - Responsiveness to instruction/responsiveness to intervention (RtI)– “Responsiveness to instruction/responsiveness to intervention is the practice of providing high-quality instruction and interventions matched to student need, monitoring progress frequently to make changes in instruction or goals, and applying child response data to important educational decisions”.

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<sup>3</sup> Excerpts from the NC Policies – [Addendum](#): Specific Learning Disabilities

- Essential Components
  - “A system of high-quality core instruction and evidence-based intervention;
  - Multiple tiers of instruction, that vary in intensity, matched to student need;
  - A systematic process of problem-solving/data-based decision making; and
  - A comprehensive assessment system that includes common formative assessments, interim/benchmark assessments, outcome assessments, universal screening, progress monitoring and diagnostic assessments”.

### Targeted Technical Assistance

11. Technical assistance is directly linked to the SPP indicators and to the improvement activities. The NCDPI- EC Division provides LEAs with a variety of assistance to improve performance of students with disabilities across the state and to ensure ongoing compliance with the federal and state regulations governing students with disabilities. The data on each of the indicators of the SPP are reviewed to make decisions related to LEAs in most need of improvement. Those LEAs in the most need of improvement are offered assistance.
12. Annually, LEAs are provided Child Find materials from the NCDPI EC Division and reminders regarding its obligation.
 

“The purpose of this procedure is to enhance public understanding of exceptional children and youth with special needs, to identify and locate the children and youth, and to inform the public of available services...To assist in the local Child Find efforts, we encourage the use of every available resource including, but not limited to, television and radio announcements, news releases, posters, and brochures...”.
13. The EC Division maintains a website page titled “Project Child Find”<sup>4</sup> that includes printable materials and the annual letter reminding LEAs of its obligations for this requirement.
14. The EC Division maintains resources for disabilities on its [website](#).
15. The EC Division provides a publicly posted Decision-Making and Evaluation Guidance resource titled “MTSS and Students with Disabilities”.
16. The “[MTSS and Students with Disabilities](#)” was originally created and published in August 2016 with the most recent revision in September 2020. The document contains the following key concepts for a Suspected Disability – Initial Evaluation:
  - “If it is suspected that a child’s difficulties are the result of a disability as defined by the IDEA, the IEP Team is obligated to identify the academic and/or functional areas in need of further investigation and promptly seek parental consent to conduct a full and individual evaluation”.
  - “If a parent requests an evaluation, the IEP Team must convene to determine whether the child requires a special education evaluation”.
  - “Interventions may occur concurrently with the evaluations conducted during the 90-day timeline”.
  - “NOTE: The use of RtI strategies cannot be used to delay or deny the provision of a full and individual evaluation, pursuant to 34 CFR §§300-3.04-300.311, to a child suspected of having a disability under 34 CFR §300.8”.

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<sup>4</sup> EC Division Website – [Project Child Find](#)

17. The EC Division provides a publicly posted Decision-Making and Evaluation Guidance resource titled “SLD QuickStart Guidance Document”.
18. The “[SLD QuickStart Guidance Document](#)” was originally created and published in March 2017 with the most recent revision in September 2020. The document contains references to federal regulations, the NC *Policies*, and the Office of Special Education Programs Memorandum - A Response to Intervention (RtI) Process Cannot Be Used to Delay-Deny an Evaluation for Eligibility under the Individuals with Disabilities Education Act issued in January 2011.
19. The Integrated Academic and Behavior Systems (IABS) division within the SEA defines MTSS as: “NC MTSS is a multi-tiered framework which promotes school improvement through engaging, research-based academic and behavioral practices as well as Social Emotional Learning (SEL). NC MTSS employs a systems approach using data-driven problem-solving to maximize growth for all”.
20. The NCDPI MTSS LiveBinder is maintained by Integrated Academic and Behavior Services and was retrieved from the NCDPI [website](#). Some content within the LiveBinder was created in collaboration with consultants in the Exceptional Children Division.
21. The LiveBinder “is designed for use by any district or school wishing to implement MTSS as a school improvement framework. It is meant to give guidance for implementation and sustainability, tools to do the work and assistance in problem-solving barriers that sites may encounter in their installation of MTSS”.
22. The LiveBinder contains the following information as noted in its Table of Contents (excerpts):
  - Introduction to MTSS
  - Establishing Readiness and Sustainability for Implementation
  - Measuring Implementation of MTSS
  - Essential Elements of Core
  - Analyzing Core
  - Establishing Readiness to Build and Intervention System
  - Develop an Early Literacy Component to the System of Interventions
  - Develop an Adolescent Literacy Component to the System of Interventions
  - Individual Problem Solving in Literacy
  - Develop a Math Component to the System of Interventions
  - Individual Problem Solving in Math
  - Develop a Behavior/Social-Emotional and Attendance Component to the System of Interventions
  - SLD Eligibility in an MTSS
  - Transition to SLD 2020
  - Defining SLD
  - Suspicion of a Disability MTSS and Students with Disabilities
  - OSEP Guidance
  - Problems with Old System
  - SLD White Paper
  - NC SLD Policy Criteria
  - SLD Fact Sheets
  - SLD Evaluation Resources
  - Specially Designed Instruction

- Milestones and Task Lists
- ECATS Early Warning System

23. The LiveBinder includes the following information, from “Multi-Tiered System of Supports and Students with Disabilities: Guidelines for Decision-Making and Evaluation”, regarding a suspected disability (excerpts).

**I. SUSPECTED Disability – Initial Evaluation**

- a. If it is suspected that a child's difficulties are the result of a disability as defined by the IDEA, the IEP team is obligated to identify the academic and/or functional areas in need of further investigation and promptly seek parental consent to conduct a full and individual evaluation.
- b. If a parent requests an evaluation, the IEP team must convene to determine whether the child requires a special education evaluation.
- c. Interventions may occur concurrently with the evaluations conducted during the 90-day timeline.
- d. NOTE: *“The use of RtI strategies cannot be used to delay or deny the provision of a full and individual evaluation, pursuant to 34 CFR §§300.304-300.311, to a child suspected of having a disability under 34 CFR §300.8.”*

24. The “SLD Evaluation Planning” [document](#), included the following information on the webpage in which it was located.

Once Instruction, Curriculum and Environment are considered, analyzed and determined to be effective for the majority of students, the focus then turns to the Learner for individual problem solving and, possibly, a referral for consideration of special education services.

25. “Student Progress with Interventions” includes the guidance specific to interpreting progress-monitoring data.

When interpreting progress-monitoring data, current research indicates that **length of time of intervention** rather than number of data points is the primary method of determining when to assess a student's response. Data point rules are used to see if they made progress or not, but these **decisions cannot be made if the student has not been given enough time in the instruction to make progress**. A general rule of thumb (although each individual case will differ) is to monitor for a minimum of ten weeks and calculate the trend line with at least 7-10 data points to determine student response. We then use the trend line to indicate if the response is **positive, poor or questionable**. The three sample graphs below give examples of each type of student response. However, even within these examples, teams should think about the following points within analysis of graphed data in order to make sound decisions:

- What is the quality of the data set? In other words, is there a lot of variability? If yes, more data may be needed to make a reliable decision on progress.
- Has the data been collected under optimal, standardized conditions?
- If there are questions about quality, use the median of three data collection points for graphing rather than one. In other words, the only graphed points are the median of every three data points collected (consecutively or in multiple testing settings).

26. The “Individual Problem Solving” page contains the following:

When students do not respond adequately to the standard protocol intervention provided, an individual problem solving team will want to examine the data to determine how to intensify support for that student. Most students should respond to adequately developed, evidence based interventions implemented with fidelity. However, when students do not respond or do not respond at an adequate rate to close gaps, teams will wish to use individual problem solving to find solutions that accelerate that student's learning.

27. There are no infographics nor written guidance that demonstrate a referral to special education must occur at a particular tier.
28. There are no references within the LiveBinder items, focused on problem-solving, that indicated the team would routinely discuss whether or not a disability was suspected.
29. There are no explicit sections that provide guidance on communication with families nor sample parent letters describing an MTSS or providing information regarding a parent's right to request an evaluation.
30. In preparation for the implementation of the July 1, 2020, policy changes for specific learning disabilities (SLD), the EC Division and Integrated Academic and Behavior Service Division collaborated to provide professional learning and technical assistance statewide regarding multi-tiered systems of support. These activities began after the first revision to the SLD policies were approved by the State Board of Education in January 2016. Examples of those activities are noted below:
  - [Presentations](#) at the Annual Conferences on Exceptional Children
  - MTSS Modules 1-3 (MTSS [LiveBinder](#))
  - Identification of SLD (NC School Psychology [Webpage](#))
  - Professional Learning for School Psychologists
  - Presentations at March Director's Institute
  - EC Division Summer Institute Sessions
  - Quarterly Regional Director Meetings
  - NCEES Self-Paced Courses
    - Demystifying Dyslexia
    - Implementing an Instructional Model in the Evaluation and Identification of Specific Learning Disabilities

#### **Relevant Federal Regulations** (excerpts)

#### **34 CFR § 300.101 Free appropriate public education (FAPE)**

(c) Children advancing from grade to grade. (1) Each State must ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade.

#### **34 CFR §300.111 Child find**

(a) General. (1) The State must have in effect policies and procedures to ensure that—

(i) All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; and

(ii) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services.

(c) Other children in child find. Child find also must include—

(1) Children who are suspected of being a child with a disability under §300.8 and in need of special education, even though they are advancing from grade to grade; and

(2) Highly mobile children, including migrant children.

#### **34 CFR §300.149 SEA responsibility for general supervision**

(a) The SEA is responsible for ensuring—



- (1) That the requirements of this part are carried out; and
- (2) That each educational program for children with disabilities administered within the State, including each program administered by any other State or local agency ---
  - (i) Is under the general supervision of the persons responsible for educational programs for children with disabilities in the SEA; and
  - (ii) Meets the educational standards of the SEA (including the requirements of this part), i.e., IDEA Part B
- (b) The State must have in effect policies and procedures to ensure that it complies with the monitoring and enforcement requirements in §§300.600 through 300.602 and §§300.606 through 300.608.

§300.600 State monitoring and enforcement  
§300.601 State performance plans and data collection  
§300.602 State use of targets and reporting  
§300.606 Public attention  
§300.607 Divided State agency responsibility  
§300.608 State enforcement

### **34 CFR §300.307 Specific learning disabilities**

- (a) *General.* A State must adopt, consistent with §300.309, criteria for determining whether a child has a specific learning disability as defined in §300.8(c)(10). In addition, the criteria adopted by the State—
- (1) Must not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability, as defined in §300.8(c)(10);
  - (2) Must permit the use of a process based on the child's response to scientific, research-based intervention; and
  - (3) May permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability, as defined in §300.8(c)(10).
- (b) *Consistency with State criteria.* A public agency must use the State criteria adopted pursuant to paragraph (a) of this section in determining whether a child has a specific learning disability.

### **34 CFR §300.309 Determining the existence of a specific learning disability**

- (c) The public agency must promptly request parental consent to evaluate the child to determine if the child needs special education and related services...
- (1) If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction; and
  - (2) Whenever a child is referred for an evaluation.

### **34 CFR §300.311 Specific documentation for the eligibility determination**

- (a) For a child suspected of having a specific learning disability, the documentation of the determination of eligibility, as required in §300.306(a)(2), must contain...
- (7) If the child has participated in a process that assesses the child's response to scientific, research-based intervention-
    - (i) The instructional strategies used and the student-centered data collected; and
    - (ii) The documentation that the child's parents were notified about –
      - (A) The State's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;
      - (B) Strategies for increasing the child's rate of learning; and
- (C) The parents' right to request an evaluation.

### **34 CFR §300.600 State monitoring and enforcement**

- (a) The State must—

- (1) Monitor the implementation of this part;
  - (2) Make determinations annually about the performance of each LEA using the categories in §300.603(b)(1);
  - (3) Enforce this part, consistent with §300.604, using appropriate enforcement mechanisms, which must include, if applicable, the enforcement mechanisms identified in §300.604(a)(1) (technical assistance), (a)(3) (conditions on funding of an LEA), (b)(2)(i) (a corrective action plan or improvement plan), (b)(2)(v) (withholding funds, in whole or in part, by the SEA), and (c)(2) (withholding funds, in whole or in part, by the SEA); and
  - (4) Report annually on the performance of the State and of each LEA under this part, as provided in §300.602(b)(1)(i)(A) and (b)(2).
- (b) The primary focus of the State's monitoring activities must be on—
- (1) Improving educational results and functional outcomes for all children with disabilities; and
  - (2) Ensuring that public agencies meet the program requirements under Part B of the Act, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.
- (c) As a part of its responsibilities under paragraph (a) of this section, the State must use quantifiable indicators and such qualitative indicators as are needed to adequately measure performance in the priority areas identified in paragraph (d) of this section, and the indicators established by the Secretary for the State performance plans.
- (d) The State must monitor the LEAs located in the State, using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in those areas:
- (1) Provision of FAPE in the least restrictive environment.
  - (2) State exercise of general supervision, including child find, effective monitoring, the use of resolution meetings, mediation, and a system of transition services as defined in §300.43 and in 20 U.S.C. 1437(a)(9).
  - (3) Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.
- (e) In exercising its monitoring responsibilities under paragraph (d) of this section, the State must ensure that when it identifies noncompliance with the requirements of this part by LEAs, the noncompliance is corrected as soon as possible, and in no case later than one year after the State's identification of the noncompliance.

### **Analysis and Conclusion**

The intent of a system General Supervision is to ensure that states have multiple methods of identifying and correcting patterns of noncompliance. The regulations are not monitored exclusively through one piece of the General Supervision system but rather through the integration of the eight areas required by Part B of the Individuals with Disabilities Education Act (IDEA). Further, the enforcement of Part B requirements must include technical assistance, conditions on funding, corrective action or improvement plan, withholding funds annual reporting of performance.

Because of the nature of this complaint, the findings of fact for Issue One and Issue Two have been combined as the determination of compliance or noncompliance are intertwined. As a result, the Analysis and Conclusion must consider the implications between the two issues.

Technical Assistance is one of the required components of a General Supervision system. As part of this investigation, the technical assistance activities specific to Child Find, MTSS, and SLD were reviewed, particularly in light of the recent adoption of the SLD Policy on July 1, 2020.

There is evidence to support that SLD materials housed within the MTSS LiveBinder included information prohibiting the use of an intervention as a method to delay or deny an evaluation; however, there are no regulatory references or procedures embedded within the MTSS materials themselves regarding the documentation that the child's parents were notified about the performance data that would be collected and the general education services that would be provided; strategies for increasing the child's rate of learning; a parent's right to request an evaluation; or, the public agency's obligation to request consent to evaluate a student if the student is not responding to intervention after a reasonable amount of time.

When examining the NC *Policies*, there is one policy that is not as explicitly stated as the federal regulations. Specifically, NC 1503-3.3 Determining the existence of a specific learning disability includes the following:

- (c) Following a referral from school personnel or a parent, if additional data is sought for determining a child's eligibility, parental consent must be obtained and the public agency must adhere to the timeframes described in NC 1503-2.1 and NC 1503-2.3 unless extended by mutual written agreement of the child's parents and a group of qualified professionals, as described in NC 1503-2.6(a)(1) –
- (1) If, prior to a referral, the child has not made adequate progress after an appropriate period of time, when provided instruction as described in paragraphs (b)(1),(b)(2) and (b)(3) of this section; and
  - (2) Whenever a child is referred for evaluation.

(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6); 34 CFR 300.309)

This policy references 34 CFR 300.309 as its authority; however, paragraph (c)(1) combined the language of the federal regulations with regard to referral (from either a parent or a LEA) and the requirement of an LEA to request parent consent to evaluate if the student has not made adequate process after an appropriate period of time.

(c) The public agency must promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and must adhere to the timeframes described in §§300.301 and 300.303, unless extended by mutual written agreement of the child's parents and a group of qualified professionals, as described in §300.306(a)(1)—

- (1) If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described in paragraphs (b)(1) and (b)(2) of this section; and
- (2) Whenever a child is referred for an evaluation.

[71 FR 46753, Aug. 14, 2006, as amended at 82 FR 31912, July 11, 2017]

NC included the parent as a referral source for this particular portion of its policies when the regulation explicitly states it is the responsibility of the public agency to request consent for an evaluation when children are not making progress after an appropriate period of time.

While NC includes, in its MTSS and SLD technical assistance materials, that intervention cannot be used to deny or delay an evaluation and cites the authority of the referral regulations, the NC *Policies* do not state this obligation as explicitly as the federal regulation found in 34 CFR 300.309.

An MTSS is a system of school improvement inclusive of all the instructional resources and expertise found within a school. Students served in special education are also students in general education and are entitled to receive all services and supports available through school improvement activities as

appropriate. Both general education and special education activities have unique policies, practices and procedures in order to ensure students receive educational benefit. While a MTSS is not directly administered by the EC Division nor is it a special education initiative, a response to intervention model used for the purposes of identifying a specific learning disability brings certain components of an MTSS into the EC Division's obligation for general supervision.

When NC adopted the current SLD Policy (use of child's response to intervention only), effective July 1, 2020, it complied with its regulatory requirement to permit the use of a process based on the child's response to scientific, research-based intervention (34 CFR 300.307). However, as result of this change, the additional requirements cited in 34 CFR 300.309 and 300.311 further emphasized the obligation to ensure that general education problem-solving activities, occurring prior to a referral to special education, were explicit in its procedures to ensure that there was documentation that the child's parents were notified about the performance data that would be collected and the general education services that would be provided; strategies for increasing the child's rate of learning; a parent's right to request an evaluation; or, the public agency's obligation to request consent to evaluate a student if the student is not responding to intervention after a reasonable amount of time. NCDPI did not include in its MTSS technical assistance materials, the procedures necessary to ensure problem-solving teams were effectively implementing these components of the regulations.

Further, the NC Policy referenced 34 CFR 300.309 when citing the public agency's obligation to request consent for an evaluation in NC 1503-3.3; however, by combining it with the referral process and the option of a parent referral, it introduced a level of ambiguity between the obligation to just refer and the obligation to evaluate by the public agency.

The absence of the explicit requirements of the regulations noted above within one of the NC policies and the written procedures for implementing a MTSS creates a risk that interventions may delay or deny an evaluation, in spite of the other compliant general supervision components and the extensive technical assistance provided before the implementation of the SLD policy and North Carolina's determination as "Meets Requirements" in its State Performance Plan.

As a result, NCDPI has a finding of noncompliance with its *Policies* and its Technical Assistance required as part of its system of General Supervision. NCDPI is out of compliance for both Issue One and Issue Two in this complaint. Therefore, corrective action is warranted.

**The SEA - NCDPI is not in compliance with the whether the general supervision system of the SEA is aligned with the Individuals with Disabilities Education Improvement Act (IDEA), specifically, to ensure the policies and procedures of a local education agency meet Child Find requirements.**

**The SEA - NCDPI is not in compliance with whether the SEA has policies and procedures in place to identify and correct noncompliance with Child Find, specifically the practice of requiring interventions through a multi-tiered system of support (MTSS) before a disability can be suspected.**

## CORRECTIVE ACTION

The investigation of Complaint No 20-043 is concluded. When allegations of noncompliance are substantiated by an investigation, corrective action is required. The DPI has determined the Corrective Action, after considering the complainant's proposed resolutions.

### Complainant – Proposed Resolution

The complainants offered the following activities within the state complaint against the SEA as remedies for the allegations raised.

1. Plan to systematically review the implementation of RtI with regards to Child Find and eligibility for special education.
2. Develop a process to enforce compliance with IDEA.
3. Ensure that all district and school handbooks, websites or published information relating to the MTSS/RtI process informs parents of their right to request a special education evaluation at any time they suspect their child may have a disability.
4. Ensure all local handbooks and policies do not compare a child to their classmates or peers if most children in a class or school or not meeting State approved standards when identifying a child who may be eligible for special education in the category of SLD.
5. Provide continuing education training for all LEAs in the elements that make up a comprehensive evaluation.
6. Provide continuing education training for all LEAs in the area of suspected disability.
7. Provide continuing education training for all LEAs regarding the MTSS/RtI process and special education eligibility; to include, that tiers of intervention may not delay or deny the suspicion of a disability or a referral for an evaluation for special education.
8. Provide statewide training in Child Find and how it impacts MTSS/RtI.
9. Provide easy access to information about state and local MTSS/RtI processes.
10. Intervene on behalf of students who have remained in Tier 2 and Tier 3 interventions to require problem-solving teams to consider whether or not a disability is suspected.
11. Require LEAs to establish internal monitoring to systematically review the implementation of RtI across its schools.

### Required Corrective Action

The SEA must comply with the following:

- **On or before December 1, 2020**, Carol Ann M. Hudgens, Section Chief for Policy, Monitoring and Audit, will be designated as the supervisor of this corrective action plan.
- **Between January 4, 2021 and June 30, 2021**, the SEA will develop and deliver the necessary technical assistance and professional development to support all local education agencies in fulfilling the obligations documented in this report. Consideration will be given to the proposed resolution submitted by the complainants.

- **On or before January 15, 2021**, the SEA will issue a statewide communication to local education agencies regarding the findings of this complaint.

The communication shall include:

- An overview of the SEA's corrective action and timeline for completion;
  - A requirement that all problem-solving teams must include an explicit question regarding whether or not a disability is suspected as part of each tier of intervention effective immediately;
  - A requirement for problem-solving teams to meet to discuss any child currently served in Tier 3 of intervention and served in Tier 3 at the time of school building closures (March 16, 2020) and whether a disability is suspected based on the information available to the team at the time of school building closures or any child participating in any tier of intervention that has spanned across academic school years.
    - *If a child is suspected of a disability or has not made progress after the team reviews the cumulative time spent in intervention, the child must be referred for an evaluation and the IEP Team must request parent consent for an evaluation;*
  - A parent letter that includes (1) documentation about the performance data that would be collected and the general education services that would be provided; (2) strategies for increasing the child's rate of learning; (3) a parent's right to request an evaluation that must be provided at each tier of the local intervention plan;
  - Notification that technical assistance will be provided by the SEA during the Spring of 2021 and must be completed statewide by July 1, 2021; and
  - Notification of the identification of children with specific learning disabilities as a statewide priority monitoring area beginning with the new EC Division Program Monitoring cycle starting in the 2021-2022 school year.
- **On or before February 1, 2021**, the SEA will initiate the process to amend its NC *Policies* to correct the reference to 34 CFR 300.309 through the SEA's Rules Committee and Executive Summary for the State Board of Education.

*It should be noted that the process for amending NC Policies includes a timeline in which items can be successfully brought before the State Board of Education. Further, there are requirements established by the SEA that may shift the NC Policies to a Guiding Practices/Implementation Guide. If this occurs, the Federal Regulations will be the official NC citation for authority under the IDEA with the NC Policies being limited to the items that regulations have permitted the State to establish its own criteria.*

- **On or before February 1, 2021**, the SEA will develop and disseminate the required procedures, specific to this complaint, that must be included in all state and local MTSS practices, procedures, handbooks, webpages or other locations that printed materials are otherwise displayed or distributed. These requirements must be in place by March 30, 2021.
- **On or before March 1, 2021**, the SEA will ensure that all technical assistance materials posted to the NCDPI website (MTSS and EC Division) include the required technical assistance materials.
- **On or before March 1, 2021**, the SEA will ensure that a parent information component is added to the MTSS LiveBinder posted on the NCDPI website. This component shall include parent-friendly information regarding a MTSS and the required technical assistance materials specific to parents. The EC Division will provide a hyperlink from its Specific Learning Disabilities webpage to the MTSS LiveBinder.

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- **On or before July 1, 2021**, the SEA will collect a written assurance from each local education agency that affirms its completion of the required statewide technical assistance activities specific to this complaint. If an LEA is unable or refuses to complete the activities and provide the written assurance, the SEA will take further action.
- **Beginning July 1, 2021 and until every LEA has been monitored during the new cycle**, the EC Division will include the identification of specific learning disabilities as a priority area in its cyclic monitoring of all statewide EC programs.

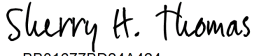
*It should be noted that this is the Monitoring component of SEA's General Supervision System. The initiation of this priority area in its program monitoring is the corrective action. The ongoing monitoring of this priority area ensures that statewide compliance has been achieved.*

**All documentation must be submitted electronically by November 25, 2021, to:**

**Teresa King, Dispute Resolution Consultant/Corrective Action Coordinator**  
**NC DPI, Exceptional Children Division**  
**6356 Mail Service Center, Raleigh, NC 27699-6356**  
[Teresa.king@dpi.nc.gov](mailto:Teresa.king@dpi.nc.gov)

This complaint shall remain open pending the submission and approval of all elements of the corrective action plan. Failure to implement the corrective action will result in sanctions in accordance with General Statute §115C-107.4.

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Sherry H. Thomas, Director  
Exceptional Children Division