

Learning Disabilities Association of North Carolina
P.O. Box 3832
Chapel Hill, NC 27515
LDA.of.North.Carolina@gmail.com

September 27, 2016

Marcelo Quiñones
Attorney, Office for Civil Rights
U.S. Department of Education
400 Maryland Avenue SW, 4E258
Washington, DC 20202-1475

Re: OCR Complaint # 11-16-1394

Dear Mr. Quiñones,

Thank you for your email of September 8, 2016 in which you ask the following questions:

“How can OCR infer that the policy revisions approved on February 4, 2016 have taken effect? In other words, please share any information that you have that tends to show that the February 4, 2016 policy changes have been implemented.”

“Do you have any information regarding any local education agencies filing of an intent to implement the policy? If so, when was this intent to implement filed?”

Background

First, as background, we would like to re-iterate that the NC *Policies* are North Carolina’s special education regulations. The NC *Policies* have the force of law; they are not simply nonbinding guidance. (North Carolina’s use of the word “policies” instead of “regulations” can cause confusion.)

Thus, the changes that were adopted by the North Carolina State Board of Education on February 4, 2016 became the law in North Carolina on February 4, 2016.

Intent to Implement

The version of the amendment to the NC *Policies* approved by the North Carolina Board of Education on February 4, 2016 states:

“[These changes become] EFFECTIVE UPON RECEIPT OF A NEW INTENT TO IMPLEMENT RTI FROM AN LEA OR A SCHOOL (INSERT SBE APPROVAL DATE); EFFECTIVE FOR ALL REMAINING LEAS/SCHOOLS JULY 1, 2020.” NC 1503-2.5(d)(11).

The North Carolina Department of Public Instruction (NC DPI) published the adopted changes in its document, “2016 *Policies* Governing Services for Children with Disabilities Addendum” (2016). (the 2016 Addendum)
<http://ec.ncpublicschools.gov/2020PolicyAddendum.pdf>

The 2016 Addendum on page 1 contains the following instructions:

“This addendum reflects the policy changes for Specific Learning Disabilities. The changes were approved by the North Carolina State Board of Education on February 4, 2016.”

“The policy changes documented in this addendum are effective July 1, 2020, or upon the receipt of the Intent to Implement from the local education agency [LEA].”

On August 30, 2016, William J. Hussey, Director, Exceptional Children Division, North Carolina Department of Public Instruction, issued a memo to the LEA Directors of Exceptional Children Programs. (See attached 2016 memo.) In that memo he directs that LEAs “may adopt the new *Policies* prior to July 1, 2020, by completing the Intent to Implement document [attached to the memo].”

We have not been able to determine if any LEA has submitted this Intent to Implement the 2016 changes, and so on September 23, 2016, submitted to Mr. Hussey a public records request. A copy of this request is attached to this letter. We will forward to you any response from Mr. Hussey as soon as we receive it. Furthermore, it is our intention to continue to submit these public records requests in order to stay abreast of which LEA’s are using the new criteria (unless this information becomes readily available to the public via NC DPI’s web site).

Failure to File an Intent to Implement the 2016 NC *Policies* Revisions

NC DPI already allows, pursuant to earlier regulations, LEA’s to implement Response to Intervention as a method for determining eligibility in the category of Specific Learning Disability (see attached 2012 memo).

However, the 2016 NC *Policies* revisions to the criteria for determination of SLD eligibility are significant and include the illegal comparison of a student to his peers. We fear some LEA’s will implement the new 2016 eligibility criteria without submitting a new Intent to Implement because they are under the mistaken belief that a prior Intent to Implement Response to Intervention is sufficient. This would be illegal and we will continue to monitor the LEA’s to determine if this is occurring.

Infer the 2016 NC *Policies* Revisions have Taken Effect

You have also asked how can OCR **infer** that the 2016 NC *Policies* revisions

have taken effect?

As part of its promotion to the State Board of Education of the 2016 NC *Policies* revisions, NC DPI prepared a white paper. <http://ec.ncpublicschools.gov/gcs04-taskforce-report.pdf> In that white paper NC DPI describes the history of RTI in the state and its use as a method to determine eligibility in the category of SLD including pilot programs in Alamance-Burlington and Cleveland school LEA's.

“To date, an estimated 135 schools in North Carolina use an RtI-based approach to the identification of students with SLD. Two districts, Alamance-Burlington and Cleveland, implement this approach K-5 and New Hanover implements K-8. ... The NC DPI intentionally paired the transition to an RtI-based approach for the evaluation and identification of students with Specific Learning Disabilities, and aligned the timeline of July 1, 2020, with the full implementation of a MTSS statewide.” (page 2)

We can infer that since the purpose of NC DPI's RTI pilot programs was to not only implement RTI but the RTI pilot programs were paired with “an RtI-based approach for the evaluation and identification of students with Specific Learning Disabilities,” then the criteria Alamance-Burlington and Cleveland LEA's implemented for SLD eligibility in NC DPI's RTI pilot programs were the new criteria set forth in the 2016 NC Policies revisions which include in determining “inadequate academic achievement” the illegal and discriminatory comparison to “culturally and linguistically similar peers.”

Also, as noted above, LEA's have already implemented RTI (which is also known as Multi-Tier System of Support – MTSS). The following link provides a listing of LEA's and schools in North Carolina that have implemented RTI/MTSS. <http://mtss.ncdpi.wikispaces.net/District+and+Charter+MTSS+Coordinators>

Furthermore, we know some of these schools are using a peer comparison to determine academic performance to determine if a student will receive instructional interventions. For example, Cabarrus County Schools in its MTSS program specifically determines a student's achievement level using a “Like-Peer Comparison.” <http://www.cabarrus.k12.nc.us/page/24726>

If you scroll towards the bottom of this page, and click the Like-Peer Comparison training webinar, you then will be guided through the process used by Cabarrus County Schools to determine if there is a problem with a student's achievement level. The instructor states the purpose of the training is to show, “How ... you use Discovery Education data to do a Like-Peer Comparison. And, we're going to look at it in two ways: by ethnicity, and by ethnicity and gender.” Additionally, in the power point text it explicitly sets forth the test to be used to determine student underachievement:

“Is there a problem? Is it significant? Compare to standards, grade level, class, and like-peers. Complete gap analysis.”

Cabarrus County Schools are using comparison to like-peers to determine if a student is underachieving. We can thus infer that a like-peer comparison is being used to determine if a student will be evaluated for eligibility for special education, and we can then infer the 2016 NC *Policies* revisions are already being implemented in some LEA's and schools in North Carolina.

Thank you for the opportunity to provide you with additional information on the 2016 NC *Policies* revisions. If you would like more information, please do not hesitate to contact me. We are an all-volunteer organization, so our response may not be immediate, but I can assure you because of the gravity of this discrimination we will always respond in a timely manner.

If you have any questions, please do not hesitate to contact me at joannajbarnes@hotmail.com, or 919-260-4672 or 919-929-3621.

Sincerely,



JoAnna J. Barnes
President, Learning Disabilities Association of North Carolina

Attachments

- August 30, 2016 Memo from William J. Hussey to EC Directors, et al
- September 23, 2016 Public Records Request from LDA of NC to William J. Hussey
- September 18, 2012 Memo from William J. Hussey EC Directors, et al



PUBLIC SCHOOLS OF NORTH CAROLINA

DEPARTMENT OF PUBLIC INSTRUCTION | June St. Clair Atkinson, Ed.D., *State Superintendent*

WWW.NCPUBLICSCHOOLS.ORG

August 30, 2016

TO: Directors, Exceptional Children Programs
Lead Administrators, Charter Schools

FROM: William J. Hussey, Director *WJH*
Exceptional Children Division

RE: **Intent to Implement**
Specific Learning Disabilities – Addendum to NC Policies Governing Services for Children with Disabilities

On February 4, 2016, the State Board of Education approved the policy for Specific Learning Disabilities (SLD) – Addendum to NC *Policies Governing Services for Children with Disabilities*. The addendum can be found on the Exceptional Children Division website at <http://ec.ncpublicschools.gov/policies/nc-policies-governing-services-for-children-with-disabilities>.

Local education agencies (LEAs) may adopt the new *Policies* prior to July 1, 2020, by completing the Intent to Implement document. This document notifies the NC Department of Public Instruction that LEAs will no longer use the discrepancy method, the alternative to discrepancy analysis or the use of a pattern of strengths and weaknesses for determining eligibility for students with Specific Learning Disabilities and will comply with the new SLD policy.

It is strongly suggested that LEAs complete the Self-Assessment of MTSS (SAM) as an implementation fidelity measure and have a rating of “initially implementing” or “fully implementing” across all of the six critical components/domains measured prior to submitting an Intent to Implement. The SAM measures school-level implementation of MTSS. The purpose of administration is to help school-level and district-level personnel identify and prioritize implementation steps. For information regarding the SAM, contact Amy Jablonski, Director of Integrated Academic and Behavior Systems, at amy.jablonski@dpi.nc.gov.

For additional information, you may contact Lynne Loeser, Consultant for Learning Disabilities, at lynne.loeser@dpi.nc.gov; or Carol Ann Hudgens, Section Chief for Policy, Monitoring and Audit, at carolann.hudgens@dpi.nc.gov.

WJH/DM/CAH/II

EXCEPTIONAL CHILDREN DIVISION

William J. Hussey, *Director* | bill.hussey@dpi.nc.gov

6356 Mail Service Center, Raleigh, North Carolina 27699-6356 | (919) 807-3969 | Fax (919) 807-3243

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Intent to Implement

As of February 4, 2016, and prior to July 1, 2020, LEAs may submit an Intent to Implement to indicate the schools within the LEA who will be using RtI as a component of a comprehensive evaluation for any student suspected of having a Specific Learning Disability.

Local Education Agency: _____

Assurances

	RtI is integrated within a multi-tiered system of support.
	For a student suspected of a specific learning disability, data derived from a student's RtI is utilized as <u>one component</u> of a comprehensive evaluation which requires <u>multiple</u> sources of data.
	RtI/MTSS may not be used to delay or deny an evaluation for any student suspected of having a disability.
	The Intent to Implement serves as notification that the school(s) within the LEA will no longer use a discrepancy method for the identification of students suspected of having Specific Learning Disabilities. <i>Submission of this document remains in effect and cannot be retracted.</i>
	I agree to follow the SLD Policy Addendum to the NC Policies Governing Services for Children with Disabilities prior to the implementation requirement date of July 1, 2020.

Definitions

NC 1500-2.x	Comprehensive balanced assessment system
NC 1500-2.x	Diagnostic assessments
NC 1500-2.x	Multi-tiered system of support (MTSS)
NC 1500-2.11(b)(13)	Progress monitoring
NC 1500-2.x	Responsiveness to instruction/responsiveness to intervention
NC 1500-2.x	Systematic problem-solving process
NC 1500-2.x	Universal Screening

Evaluation Procedures

NC 1503-2.5(d)(11)	Specific Learning Disability
Additional Procedures for Evaluating Children with Specific Learning Disabilities	
NC 1503-3.1	Specific Learning Disabilities
NC 1503-3.2	Additional Group Members
NC 1503-3.3	Determining the Existence of a Specific Learning Disability
NC 1503-3.4	Observation
NC 1503-3.5	Specific Documentation for the Eligibility Determination

 (Signature) Exceptional Children Director/Coordinator

 Date

 (Signature) LEA Superintendent/Director of Schools

 Date

The LEA will implement RtI as an evaluation component and discontinue the use of a discrepancy method in the following schools:

School	Principal Signature	Grade Levels	School Level MTSS Coordinator/Coach	SAM has been completed
				Choose an item.
				Choose an item.
				Choose an item.
				Choose an item.
				Choose an item.

If ALL of the schools in the LEA are implementing RtI, check here.

Learning Disabilities Association of North Carolina
P.O. Box 3832
Chapel Hill, NC 27515
LDA.of.North.Carolina@gmail.com

September 23, 2016

William J. Hussey
Director
Exceptional Children Division
North Carolina Department of Public Instruction
6356 Mail Service Center
Raleigh, NC 27699-6356

Re: February 4, 2016 Addendum to NC *Policies Governing Services for Children with Disabilities* ("Policies");
Intent to Implement

Dear Mr. Hussey,

Pursuant to North Carolina Public Records Law, G.S. §132-1, I am hereby requesting the opportunity to inspect or obtain copies of the following information:

- (1) Any Intent to Implement documents that have been submitted by any LEA or school pursuant to the adoption of the *Policies* adopted by the State Board of Education on February 4, 2016. (These Intent to Implement documents would be submitted pursuant to your instructions to Directors of Exceptional Children Programs in the memo dated August 30, 2016. See attachments.)
- 2) Any documents or communications (including emails) that infer that a LEA or school has implemented the criteria for eligibility for special education in the category of Specific Learning Disability adopted by the State Board of Education on February 4, 2016, even if the LEA or school has not submitted a new Intent to Implement.

If there are any fees for searching or copying these records, please inform me if the cost will exceed \$20. However, I would also like to request a waiver of all fees in that the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding of changes made to the NC *Policies Governing Services for Children with Disabilities*. This information is not being sought for commercial purposes.

The law requires that you respond to and fulfill this request "as promptly as possible." If you expect a significant delay in responding to and fulfilling this request,

please contact me with information about when I might expect copies or the ability to inspect the requested records.

If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

If you have any questions or wish to contact me, please send any written communication to the address provided above, or call me at 919-929-3621 or email me at joannajbarnes@hotmail.com

Thank you for considering my request.

Sincerely,



JoAnna J. Barnes
President, Learning Disabilities Association of North Carolina

Home address:
308 Sunset Creek Circle
Chapel Hill, NC 27516

cc: Lynne Loeser, Consultant for Learning Disabilities, EC Division, NC DPI
Carol Ann Hudgens, Section Chief for Policy, Monitoring and Audit, EC
Division, NC DPI

Attachments
August 30, 2016 Memo
Intent to Implement Form



PUBLIC SCHOOLS OF NORTH CAROLINA

DEPARTMENT OF PUBLIC INSTRUCTION | June St. Clair Atkinson, Ed.D., *State Superintendent*

WWW.NCPUBLICSCHOOLS.ORG

September 18, 2012

MEMORANDUM

TO: Directors, Exceptional Children Programs
Lead Administrators, Charter Schools
Principals
Exceptional Children Coordinators, Charter Schools
RtI Coordinators

FROM: Mary N. Watson, Director *MNW*
Exceptional Children Division

RE: Responsiveness to Instruction Intent to Implement (RtI)

IDEA 2004 requires states to allow LEAs to implement Responsiveness to Instruction (RtI) as a method for determining Specific Learning Disabilities (SLD) eligibility. For schools that have participated in RtI training and intend to fully implement RtI for SLD eligibility during the 2012-13 school year, the following guidelines should be followed:

1. LEAs should submit the attached Intent to Implement Responsiveness to Instruction Form to Lynne Loeser for **each** school planning full implementation of RtI for eligibility of SLD. The form includes a description of on-going training, implementation plans, and activities for expansion to other schools within the LEA. If a school has already submitted an Intent Form, there is no need for resubmission.
2. RtI Census information should be maintained for the 2012-13 school year by each school that submits a new Intent Form, documenting all students in the RtI process. The Census will be submitted to DPI in June 2013. A reminder of the due date will be sent in the spring, with directions and information. *The RtI Census is currently under revision. A webinar describing the data gathering process is scheduled for Wednesday September 19th from 3:15-4:15. Further information will be sent to schools through the listservs.*
3. RtI should be utilized for any student struggling in an academic or behavioral area. When the data gathered during the RtI process results in a referral to special education, this data should be used when making decisions for eligibility.
4. "Entitled" is no longer used as an eligibility classification. North Carolina still adheres to categorical eligibility, using one of the fourteen disability categories established by the state. All required evaluations in the suspected disability must be completed prior to eligibility determination, but only SLD may be determined through RtI. Please refer to *Policies Governing Services for Children with Disabilities* (June 2010) for more details regarding required evaluation components for all areas of disabilities.

Questions should be addressed to Lynne Loeser at (919) 807-3596 or lynne.loeser@dpi.nc.gov

MNW/ll/ws

C: Ira Wolfe, Section Chief, Exceptional Children Division
Sherry Thomas, Section Chief, Exceptional Children Division

EXCEPTIONAL CHILDREN DIVISION

Mary N. Watson, *Director* | mary.watson@dpi.nc.gov

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