Learning Disabilities Association of North Carolina

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North Carolina Department of Public Instruction

Exceptional Children Division

ATTN: Carol Ann Hudgens or Lynne Loeser

6356 Mail Service Center

Raleigh, NC 27699-6356

 Re: Proposed Policy Amendments: Identification for Specific Learning Disabilities

Dear Sir or Madam,

 We are writing to express our serious concerns with the proposed changes (March 2015) to the North Carolina Policies Governing Services for Children with Disabilities (NC Policies) regarding the identification of Specific Learning Disability (NC 1500-2.4).

 As background, the Learning Disabilities Association of North Carolina represents parents, educators and advocates who work to create opportunities for success for all individuals affected by learning disabilities.

 **Of critical concern is NC DPI’s proposed and impermissible departure from well-settled federal standards governing identification and eligibility under the category of Specific Learning Disability as articulated in IDEA, and as further articulated below. Such a departure, if adopted, may trigger legal challenges when scrutinized, and accordingly, the proposed revisions cannot be adopted.**

We have the following comments on the proposed changes:

**Retain the existing definition of Specific Learning Disability (SLD) in the NC Policies**

 NCDPI’s new definition is a radical departure from the definition of SLD in the federal law, IDEA, and its implementing regulations. The existing NC definition of SLD conforms with the federal definition.

 The federal definition states:

“Specific learning disability means a disorder in one or more of the basic **psychological** processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.” [34 CFR Section 300.8(c)(10)(i)]

The existing NC definition of SLD in the NC Policies states:

SLD “Means a disorder in one or more of the basic **psychological** processes involved in

understanding or in using language, spoken or written, that may manifest itself in the impaired ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.” [NC 1500-2.4]

They are almost identical, and it is clear the existing NC definition conforms with the federal definition.

 **However, the new definition of SLD proposed by the NCDPI is a radical departure from the federal definition. It re-writes the federal definition and fails to follow federal law**:

SLD “Means a disability in one or more of the basic **learning** processes that result in

**academic underachievement** following sustained, high quality instruction and scientific research based intervention. Associated conditions may include, but are not limited to dyslexia and dyscalculia.”

 Why are the change from “basic psychological processes” to “basic learning processes,” and the addition of the requirement of “academic underachievement” of serious concern to students with SLD and their advocates? Because it defines SLD as simply a student who is failing to achieve age or grade-level standards. This new definition describes a SLD as simply a failure to “learn.”

 This new definition fails to recognize that a SLD is a cognitive processing disorder that impacts “basic psychological processes.” Furthermore, creating the additional requirement of “academic underachievement” adds an impermissible additional requirement as a condition for identification as SLD. State law may proceed from the federal law, but it may not exceed it.

 **Moreover, we are concerned that by adding to the definition of SLD “academic underachievement” some schools may equate “academic underachievement” with “disability,” and we will return to the days when too many students without disabilities were identified as disabled because of low academic achievement.**

 **The existing NC definition of SLD conforms with the SLD definition in Federal Law, the Individuals with Disabilities Education Act (IDEA). We respectfully request that the existing NC definition of SLD be retained.**

**Retain the existing Evaluation Criteria for SLD**

 The existing NC Policies require the evaluation for a SLD include ten (10) required screenings and evaluations including a “**Psychological evaluation, to include an intellectual evaluation**, as appropriate when using RtI.” [NC 1503-2.5 (11) (i)] (Intellectual evaluations are also called cognitive evaluations or assessments.)

 The proposed changes to the NC Policies eliminate the required psychological/intellectual evaluation.

 And, furthermore, the proposed changes to the NC Policies eliminate the discrepancy method as a way to identify students with SLD. The discrepancy method (that requires a 15 point discrepancy between IQ and achievement) has been criticized for restricting the students who are identified or who can be identified as SLD. However, by requiring a psychological/intellectual evaluation as part of the screening and evaluation, a student’s cognitive strengths and weaknesses are identified through interpretation of the IQ subtest scores. With this information psychologists and educators can ascertain how a student will learn. So, even if a student is not eligible under the discrepancy method, knowledge gained via a comprehensive psychological/intellectual evaluation will help all students to learn, even SLD students who do not have a discrepancy.

 This proposed change by NCDPI to the evaluation process is also a radical departure from the federal regulations, and thus the proposed evaluation process fails to follow federal law.

**Federal law now requires**:

In conducting the evaluation, the public agency must—

….

 (3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. [34 CFR 300.304 (b)]

The federal law recognizes the importance of a cognitive assessment in order to develop an appropriate educational program for a student. Without this assessment, it is impossible to develop an educational program for a student with a SLD that is meaningful and effective. For example, a cognitive assessment may reveal that a student is struggling because of a weakness in visual processing which will then cause the student great difficulty in spelling, reading, mathematical calculations, copying words for a list or from the board. Without this detailed knowledge, the teacher will not know how to address that student’s weaknesses.

 Indeed, a number of experts in the field of learning disabilities support the crucial need for a cognitive assessment for not just identification but for developing an educational program. Pennington, B. F. (2008). Diagnosing Learning Disorders, 2nd Ed. New York: Guilford Press. Ortiz, Samuel (2014) “The Primacy of IQ Subtest Analysis to Understand Reading Performance for Culturally Diverse Groups,” Vol. 20, No. 1, pp. 45 – 54, Learning Disabilities.

 **The existing NC evaluation criteria for a SLD conform with Federal Law, the Individuals with Disabilities Education Act (IDEA). We respectfully request that the existing NC evaluation criteria for SLD be retained.**

**Retain the existing Eligibility Criteria for SLD**.

 The proposed changes removes from the eligibility requirements the “strengths and weaknesses” alternative to the criterion that a student is not making sufficient progress to meet age or grade-level standards. What remains as the sole method for identifying students with SLD is Response to Intervention (RtI). But, RtI is not a diagnostic assessment; rather it is a general education initiative.

 Eliminating the “strengths and weaknesses” alternative results in the failure to recognize that a SLD is a cognitive processing disorder. It defines SLD as simply a student who is failing to achieve age or grade-level standards; a student with a SLD is simply a student who fails to learn. Fiorello, Catherine A. (2014) “Response to the Special Issue: The Utility of the Pattern of Strengths and Weaknesses Approach,” Vol. 20, No. 1, pp. 55 – 59, Learning Disabilities.

 **Furthermore, the elimination of the “strengths and weaknesses” alternative is a radical and impermissible departure from federal law. Federal law requires this alternative. 34 CFR Section 300.309(a)(2).**

 **The existing NC eligibility criteria for SLD conform with the SLD criteria in Federal Law, the Individuals with Disabilities Education Act (IDEA). We respectfully request that the existing NC eligibility criteria for SLD be retained.**

**Retain Response to Intervention as a Progress Monitoring Tool, but do not improperly expand RtI to be the sole evaluation method for SLD**

 RtI is a general education initiative designed to give academic support in delineated tiers for students in general education who are not achieving at age or grade-level. In addition to providing academic support, RtI progress monitoring provides data on students that may be used as part of a comprehensive evaluation for a SLD.

 RtI was not designed to provide a diagnostic assessment of a struggling student. Rather, students who are struggling should have ready access, as set out by federal law, to a comprehensive evaluation that includes a cognitive assessment to ascertain the student’s strengths and weaknesses. Fuchs, Douglas & Lynn S. Fuchs (2010) “The “Blurring” of Special Education in a New Continuum of General Education Placements and Services,” Vol 76, No.3, pp. 301-323, Council for Exceptional Children.

 Further, RtI is still in the developmental stage. The process has no State or Federal regulations and no guidelines or timelines. Moreover, RtI is practiced in a different manner in every State and every school district and every school in the country and in every school in the state of North Carolina. RtI has the potential, if properly implemented, to be a powerful educational tool, but it is not a substitute for a comprehensive evaluation of a student suspected of having a SLD.

 We strongly urge you to not adopt these proposed changes to the NC Policies, and instead retain the current language which conforms with federal law and regulations.

Respectfully submitted,

Patricia Lillie JoAnna J. Barnes

Legislative Committee Co-Chairs

Learning Disabilities Association of North Carolina