

# The Council on Educational Services for Exceptional Children

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The Exceptional Children's Division of North Carolina's Department of Public Instruction has requested that the State Board of Education amend the *North Carolina Policies Governing Services for Students with Disabilities* to redefine students with specific learning disabilities (SLD), eliminate the requirement for the use of IQ-Achievement discrepancy, eliminate the requirement for use of a pattern of strengths and weaknesses, and require the use of a systematic process as the primary marker to identify students with learning disabilities. A five-year implementation plan has been introduced with an effective date of July 1, 2020.

The proposed policy changes are inextricably tied to the implementation of a multi-tiered system of support (MTSS). MTSS is a general education, school improvement initiative and should align with school-improvement plans. MTSS, rooted in the data-informed practices of Response to Intervention (RTI) and Positive Behavior Intervention and Support (PBIS), offers a tiered level approach to student support. MTSS requires the examination of instruction, curriculum and environment as the reason why students are struggling and demonstrating poor outcomes prior to the examination of an individual student.

**We, the Council on Educational Services for Exceptional Children (the 'Council'), without reservation, support the MTSS initiative and the Exceptional Children's Division's desire to move to an evaluation and eligibility model that includes a focus on assessing a student's response to interventions in general education programs rather than a reliance on IQ-achievement testing.** However, during our meetings and discussions, the following areas of concern were identified: potential legal implications, implementation of a MTSS and the lack of data collected from the pilot participants (Local Education Agencies, LEAs), and equity.

With respect to our purpose and duties as a Council, we offer this statement for the State Board of Education's consideration.

## Potential Legal Implications

Discussions of potential legal implications included, but were not limited to, changes to the federal SLD definition and child-find. By altering the federal SLD definition and the state's child-find obligation, the proposed policy changes raise potential legal implications. The federal definition of a SLD as stated in the Individual's with Disabilities Education Act (IDEA) regulations is as follows: "[a] disorder in one or more of the basic *psychological* processes involved in understanding or in using language, spoken or written..." 34 C.F.R. § 300.8(c)(10). The concern stems from the proposal's elimination of *psychological* from the state definition (Proposed NC 1500.2.4(b)(11)). States are required to adopt criteria for determining whether a child has a SLD, but the state criteria must still align with the federal SLD definition found in 34 C.F.R. § 300.8(c)(10). The removal of "psychological" from the state definition will create inconsistency between the state and federal definitions for SLD.

Additionally, IDEA requires that all LEAs identify, locate, and evaluate children with disabilities regardless of the severity of their disability 20 U.S.C. § 1412(a)(3), 34 C.F.R. § 300.111. This is the state's child-find obligation. The Council is concerned that the changes proposed for NC 1500.2.4 (b)(11), will result in an increase in legal violations by LEAs, specifically an increase in instances of LEAs failing to identify students, to identify students in a timely fashion, and failing to identify students with high cognition who may be eligible special education and related services – the twice exceptional or 2E students.

**The proposed changes have significant potential legal implications and, as a result, could subject LEAs to increased litigation. It is imperative that these proposed changes are thoroughly vetted by attorneys who are knowledgeable about federal special education law.**

## Implementation of a MTSS

Neither the RTI model nor the IQ-achievement discrepancy method, in themselves, are sufficient to support an eligibility determination for a student with a SLD. In fact, each should be one of many tools a LEA can use to identify a student with a SLD. However, **eliminating the IQ-achievement discrepancy method and allowing**

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**LEAs to adopt individual standards for the RTI process, without the support of our state policies, will create inconsistencies and noncompliance across the state in terms of who may be eligible for special education and related services and who is not.** North Carolina's current policies provide the use of a hybrid model to identify students with SLD, that is, the use of either response to scientific, research-based intervention or discrepancy testing in establishing eligibility for SLD. Yet, the Council believes that our state has done a modest job in educating parents and LEAs about the viability of RTI. Though our current policies provide for the use of the RTI process, the absence of sound guidance for the process may have contributed to the reliance upon use of the discrepancy method for identifying and determining SLD eligibility. **The Council concurs that the solution to the over-reliance on the IQ-achievement discrepancy method is not to eliminate its usage but to strengthen the current RTI practices.** This can be achieved, in part, by extracting data from schools and LEAs that have participated in the pilots and/or have demonstrated positive student outcomes by implementing RTI and providing state support for differentiated LEA policies. New Hanover County, Cleveland County and Alamance-Burlington School System have been identified as such participants.

## *Implementation in Secondary Settings*

MTSS/RTI is an early intervention system initiative and much emphasis has been placed on the potential for student success in elementary settings. However, the proposed policy changes are not written exclusively for early grades and will impact middle and secondary students as well. The Council has raised concerns regarding secondary students, for example, a clear directive should be provided as to how to handle SLD re-evaluations of secondary students who were identified under the prior evaluation criteria. Also, given the nuances of secondary student schedules and course requirements, what does a "tiered structure" at the secondary level look like? The integrity of the RTI process and the fidelity of implementation will determine success for LEA leaders, teachers and our students. **Bridging the span between theory and practice and making sense of it for those in leadership roles is critical.**

## **Equity**

Parents have the right to request a full and individualized education evaluation 34 C.F.R. § 300.301. However, the components of a full and individualized evaluation are determined by the Individualized Education Plan (IEP) team. If the state removes the requirement that an assessment of psychological or cognitive processing is needed to determine whether a child has a specific learning disability, some parents may be denied their right to obtain that assessment. In those instances, only parents who have the means to obtain a private cognitive assessment, or the ability to navigate the process of filing a state complaint, or hire an attorney and pursue a due process hearing – may receive a cognitive assessment to be used to help determine if their child needs special education and/or related services. **The issue is not whether a cognitive assessment can be requested but if, and under what circumstances, the assessment will actually be obtained.** Further, if the IEP team determines that an assessment of psychological or cognitive processing is not needed, it is unclear whether the parent would then be entitled to have an Independent Educational Evaluation (IEE) done at public expense under 34 C.F.R. § 300.502.

The Council believes it is imperative that a well-established plan in relation to the RTI process, one which identifies operational steps, is created to educate and support the parents, caregivers, students, and educators who will be directly impacted by the proposed policy changes.

## **RECOMMENDATIONS**

The Council recommends the following:

- That members of the State Board of Education hold a roundtable discussion with the state's special education attorneys to review the legal implications of the proposed policy changes;
- That the State Board of Education elect to maintain the use of the federal definition of a student with a Specific Learning Disability;

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- That the State Board of Education elect to maintain the use of a hybrid model to identify students who have a Specific Learning Disability;
- That the State Board of Education require the provision of RTI guidance that incorporates
  - Timelines for interventions (one tier to the next)
  - A finite number and types of intervention strategies
  - General education services that will be provided in the RTI process, for example, tutoring
  - A clear delineation between Tier 3 interventions and the referral to special education
- That the State Board of Education require the provision of a statewide plan to include operational steps to inform parents of their rights in relation to the RTI process