August 3, 2022

Honorable Catherine Truitt
Superintendent of Public Instruction
North Carolina Department of Public Instruction
6301 Mail Service Center
Raleigh, North Carolina 27699
catherine.truitt@dpi.nc.gov

Dear Superintendent Truitt:

This letter addresses the North Carolina Department of Public Instruction's (NCDPI's) submissions dated August 13 and 31, 2021, October 22, 2021, November 30, 2021, January 31, 2022, and April 11, 2022 in response to the Office of Special Education Programs' (OSEP's) required actions under the following sections in OSEP's May 14, 2021 differentiated monitoring and support (DMS) report: a) Fiscal Accountability; b) Compliance; and c) Other Areas Addressed, including Specific Learning Disability (SLD) Eligibility Determinations; General Supervision: Implementation of Dispute Resolution Decisions; and Free Appropriate Public Education (FAPE) to Eligible Students with Disabilities in Private Psychiatric Residential Treatment Facilities (PRTFs) under the Individuals with Disabilities Education Act (IDEA).

OSEP's DMS report required NCDPI to take the following corrective actions within 90 days from the date of the DMS report:

FISCAL ACCOUNTABILITY

A. Base Payment Adjustments

1. Develop and submit to OSEP its revised policies and procedures that demonstrate that NCDPI will adjust the base payment for the first fiscal year after the first annual child count in which a local educational agency (LEA) that received a base payment of zero in its first year of operation reports that it is serving any children with disabilities (for Section 611 base payments) or any children with disabilities ages three through five (for Section 619 base payments), in accordance with 34 C.F.R. §§ 300.705(b)(2)(iv) and 300.816(b)(4).

2. Develop and submit to OSEP its revised policies and procedures that demonstrate that NCDPI will adjust the base payment for a charter school LEA that experiences a significant expansion in its enrollment in a subsequent year, in accordance with 34 C.F.R. §§ 300.705(b)(2)(i) and 300.816(b)(1) and 34 C.F.R. Part 76 Subpart H.

3. For any LEA whose Section 611 and/or Section 619 allocation was less than the amount to which it was entitled in Federal fiscal year (FFY) 2018, FFY 2019, and/or FFY 2020, because it did not receive a base payment to which it was entitled, determine the

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difference between the amount the LEA actually received and the amount of the allocation that the LEA should have received.

4. For any LEA that received less than the amount of Section 611 and/or Section 619 funds to which it was entitled in FFY 2018, FFY 2019 and/or FFY 2020, submit documentation demonstrating that the LEA was made whole, in accordance with 34 C.F.R. §§ 300.705(b)(2)(i), 300.705(b)(2)(iv), 300.816(b)(1), and 300.816(b)(4), or a plan outlining how the State will make these LEAs whole during FFY 2020.

B. Reallocation of Funds

Develop and submit to OSEP its revised policies and procedures that demonstrate the State educational agency (SEA) will conduct any reallocations of IDEA Part B funds in accordance with the requirements in IDEA Sections 611(f)(3) and 619(g)(2) and 34 C.F.R. §§ 300.705(c) and 300.817, and will use funds that would otherwise have been available to an LEA that does not accept or apply for IDEA Part B funds to provide direct services in accordance with 34 C.F.R. § 300.227.

C. Subrecipient Monitoring

Submit to OSEP a sample grant award notification (GAN) template that includes the information as required by 2 C.F.R. § 200.332(a). NCDPI must also demonstrate that the GAN is provided to each of its LEAs on an annual basis.

OTHER AREAS ADDRESSED

A. Specific Learning Disability Eligibility Determinations

1. A report detailing the status of the implementation of the corrective actions identified in NCDPI's written decision on Complaint 20-043, with quarterly updates thereafter until NCDPI demonstrates that the revised policies and procedures ensure compliance with the IDEA child find and FAPE requirements in accordance with IDEA Sections 612(a)(1), 612(a)(11) and 616(a)(1)(C), and their implementing regulations at 34 C.F.R. §§ 300.149 and 300.600, along with 20 U.S.C. 1232d(b)(3)(A);

2. Policies and procedures that demonstrate that the NCDPI-imposed requirement for "problem-solving teams to meet to discuss any child currently served in Tier 3 at the time of school building closures (March 16, 2020) and [to determine] whether a disability is suspected based on the information available to the team at the time of school building closures," applies to any child currently in any tier of intervention, regardless of which tier or the length of time he or she has been receiving interventions in the tier; and

3. Policies and procedures that demonstrate that, if the child's parent has not been provided an opportunity to participate in the problem-solving team's discussion, NCDPI ensures that the LEA has informed the parent: (1) of the problem-solving team's discussion and decision of whether a referral for an initial evaluation of the child is appropriate; and (2) their right to request an initial evaluation of their child if the parent suspects their child may be a child with a disability under IDEA.

B. General Supervision: Implementation of Dispute Resolution Decisions

Develop and submit to OSEP its revised policies and procedures that demonstrate that the SEA has a mechanism to ensure due process hearing decisions are implemented within the timeframe prescribed by the hearing officer, or if there is no timeframe prescribed by the hearing officer, within a reasonable timeframe set by the State in accordance with the requirements in 34 C.F.R. §§ 300.511–300.514, 300.149, and 300.600.

C. FAPE to Eligible Students with Disabilities in Private Psychiatric Residential Treatment Facilities (PRTFs)

1. Revised policies and procedures that demonstrate that NCDPI will:

   a. Identify, locate, and evaluate students with disabilities residing in the State who are attending PRTFs or other educational facilities outside the State;

   b. Determine if these students are publicly placed; and

   c. Make FAPE available to any students with disabilities publicly placed outside the State; and

2. A detailed description of:

   a. The steps NCDPI has taken to identify, locate, and evaluate all eligible children with disabilities residing in the State who are placed by a public agency in a PRTF or other educational facility located outside the State;

   b. The impact of those steps on ensuring that all such children are identified, located, evaluated, and FAPE is made available to them; and

   c. The additional steps (with timelines) that NCDPI will take to ensure that all such children are identified, located, evaluated, and FAPE is made available to them.

Upon reviewing the State's submissions, OSEP has determined that NCDPI has met the above required actions for the areas related to Fiscal Accountability and General Supervision: Implementation of Dispute Resolution Decisions, and no further action is required with respect to those findings. The findings related to SLD determinations and FAPE to eligible students with disabilities in PRTFs remain open, as detailed below:

1) In its November 30, 2021 response to OSEP regarding the first corrective action, A.1, related to SLD eligibility determinations, NCDPI indicated that the identification of children with SLD as a statewide priority monitoring area was scheduled to begin with the 2021-2022 Exceptional Children Division Program Monitoring cycle and continue until each LEA is monitored. NCDPI noted that monitoring would start in July 2021; however, the State's April 11, 2022 corrective action submission indicated that the cyclical monitoring had been delayed until Spring 2022. NCDPI subsequently clarified that the monitoring activity to receive and review LEAs' assurances specific to the findings related to the State complaint at issue began in July 2021 and that cyclical monitoring for program compliance would begin in Spring 2022, including review of the LEAs' implementation of the assurances. NCDPI further indicated that it will provide

OSEP with a summary and overview of the monitoring planning (dates, number of LEAs, etc.), including a draft monitoring protocol.
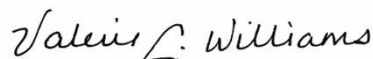
In response to the actions NCDPI has taken regarding corrective action A.1 related to SLD eligibility determinations, within 30 days of the date of this letter, NCDPI must submit to OSEP a summary and overview of the monitoring planning and the monitoring protocol related to identification of children with SLD. Thereafter, NCDPI must provide OSEP with quarterly updates until the State demonstrates that it has implemented the revised policies and procedures to ensure compliance with the IDEA child find and FAPE requirements in accordance with IDEA Sections 612(a)(1), 612(a)(11) and 616(a)(1)(C), and their implementing regulations at 34 C.F.R. §§ 300.149 and 300.600, along with 20 U.S.C. 1232d(b)(3)(A).

With respect to the second and third corrective actions related to SLD eligibility determinations – A.2 and A.3 – OSEP has reviewed NCDPI's submissions and determined that the State has met those required actions and no further action is required with respect to those corrective actions at this time.

2) Because the State's submissions in response to the corrective actions regarding FAPE to eligible students with disabilities in PRTFs raise novel and complex issues, OSEP is continuing to work with the State to analyze the relevant facts and determine what, if any, additional corrective or other actions should be taken. OSEP will continue to follow up with NCDPI to resolve this finding.

OSEP appreciates the cooperation and assistance provided by your State staff in addressing the above requirements related to Part B of the IDEA. If you have any questions, please do not hesitate to call your OSEP State Lead, Lynne Fairfax, at Lynne.Fairfax@ed.gov or 202-245-7337.

Sincerely,

Valerie C. Williams

Valerie C. Williams

cc: Sherry Thomas, Part B State Director