

# Council On Educational Services For Exceptional Children

North Carolina State Advisory Panel

2022-2023 ANNUAL REPORT

Diane H Coffey, Chairperson

Staff support provided by the North Carolina Department of Public Instruction Exceptional  
Children Division

Sherry Thomas, Senior Director (2022-2023)  
Carol Ann Hudgens, Senior Director (current)

Council on Educational Services for Exceptional Children  
North Carolina Department of Public Instruction  
Office of Exceptional Children

## Introduction

The Individuals with Disabilities Education Act (IDEA 2004) requires that every state establish and maintain a state advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the state. The federal regulations specify membership and require a majority of the membership be parents of children with disabilities and individuals with disabilities.

Specifically, the regulations require the following membership include:

- Parents of children with disabilities ages birth through 26
- Individuals with disabilities
- Teachers
- Representatives of institutions of higher education that prepare special education and related services personnel
- State and local education officials, including officials who carry out activities under subtitle B of title VII of the *McKinney Vento Homeless Assistance Act*
- Administrators of programs for children with disabilities
- Representatives of other state agencies involved in the financing and delivery of related services to children with disabilities
- Representatives of private schools and public charter schools
- Representative of vocational, community, or business organization concerned with the provision of transition services to children with disabilities
- Representative of the State Child Welfare agency responsible for foster care
- Representative from the state Juvenile Justice and adult corrections agencies

The Council on Educational Services for Exceptional Children (CESEC) is established in accordance with Section 300.167-300.169 of the federal regulations, Section 1412(a)(21) of the Individuals with Disabilities Educational Act (IDEA 2004) and Section 115C-121.1 of the North Carolina General Statutes as the State Advisory Panel to the State Board of Education. The purpose of the Council is to:

- Advise the Board of unmet needs within the State in the education of children with disabilities;
- Comment publicly on rules and regulations proposed by the Board regarding the education of children with disabilities;
- Advise the Board in developing evaluations and reporting on data to the United States Secretary of Education as required by IDEA;
- Advise the Board in developing corrective action plans to address findings identified in federal monitoring reports required by IDEA;
- Assist the Board in developing and implementing policies related to the coordination of services for students with disabilities; and
- Carry out any other responsibilities as designated by federal law or the State Board of Education.

## Membership

The Council shall consist of a minimum of 24 members. Currently, the Council consists of 28 members - 23 appointees and 6 ex-officio. Members are appointed by the Governor, President Pro Tem of the Senate, the

## 2022 - 2023 Annual Report

Speaker of the House, and the State Board of Education. Appointees represent individuals with disabilities from the ranks of parents, teachers, higher education, public and private schools, business/vocational community, and charter schools. A majority of the representatives shall be parents of children with disabilities and persons with disabilities. The term of appointment for members appointed by the State Board of Education is four years. All other terms are two years.

The current list of members of the Council can be found at this web address:

<https://www.dpi.nc.gov/districts-schools/classroom-resources/exceptional-children/parent-resources>

### Committee Organization

The activities of the Council on Education Services for Exceptional Children are governed by the North Carolina State Board of Education bylaws for Advisory Committees. The CESEC delegates various subcommittees to monitor issues and concerns.

#### Committee work:

The Council operates four committees to help meet the legislative purpose of the Council. These committees are the Executive Committee, the Unmet Needs Committee, the Reports and Data Committee, and the Policy and Procedures Committee.

#### **The Executive Committee** – Diane H Coffey, 22-23 Chair

##### Primary Functions

- Set meeting agendas
- Draft the Annual Report

#### **The Unmet Needs Committee** - Aimee Combs, 22-23 Chair

##### Primary Functions

- Identify unmet needs impacting Special Education in NC
- Establish priorities for the committee
- Determine topics for Council action relative to unmet needs of stakeholders involved in Special Education programs including students, teachers, parents, and administrators.

#### **The Reports & Data Committee** - vacant, chair

##### Primary Function

- Advise the SEA in developing evaluations and reporting on data to the Office of Special Education Programs (OSEP)
- Review data and advise on annual reports as needed.

#### **The Policies & Procedures Committee** – Abby Childers and Anthony Baker, 22-23 Co-Chairs

##### Primary Function

- Comment publicly on rules or regulations proposed by the SEA regarding the education of students with disabilities
- Advise the SEA in developing and implementing policies relating to the coordination of services for students with disabilities
- Revise the council's by-laws
- Reviews and updates council operating procedures

## 2022 - 2023 Annual Report

### Meetings

#### September 2022

During this month's meeting, the Council heard information from the Office of Learning Recovery and Acceleration and the Office of Exceptional Children (OEC). Topics included information from the *Report to the NC General Assembly: An Impact Analysis of Student Learning During the COVID-19 Pandemic*, Child Find in Early Learning settings, requirements for twice exceptional students, and updates from the OEC. Updates included the removal of "per reporting period" on IEPs, dispute resolution annual report, and EC Conference information.

Based on presented information and discussion, the Council recorded the following recommendations:

- Need guidance about how to interpret document because it doesn't show true picture about what was lost—nothing about IEP progress or NC Extend data
- My recommendation would be to add a note about which students were considered in this data and the growth trajectories.
- We should look at learning gains/growth rather than learning loss or simply the state test score
- New report that looked at IEP goals and what had the most impact on them
- My recommendation would be to add a supplementary report with growth on IEP goals

There was a public comment submitted via email about twice exceptional students. Subcommittees did not meet this session.

#### December 2022

This month, the Council received information from the OEC and the Office of Testing and Accountability (OTA). Information from the OEC included information on the trends in school mental health initiatives, child count numbers, school-level vacancies, and rule-making process that EC policies are currently undergoing. After hearing from the OEC, information from OTA regarding the School Performance Grade redesign that is occurring as part of the Superintendent's Operation Polaris plan.

Based on presented information and discussion, the Council recorded the following recommendations:

- Training when schools are required to alert parents that uncertified teachers are covering specially designed instruction
- State could mandate a structure to avoid overwork load on the individual teacher
- Possible retention bonuses to keep these EC folks
- Reach out to your local legislators because we are limited on our funding, partly impacted by the cap of 13%, further complicate by high needs students funding equal to low needs students
- New guidance document possibly be electronic to allow for live updates
- Provide public knowledge opportunities (Virtual town hall/ webinars, etc.) to pre-teach before the open comment period

There was no public comment and subcommittees did not meet.

## 2022 - 2023 Annual Report

### March 2023

The OEC, Healthy Schools, and representatives from Disability Rights, Legal Aid, Council for Children's Rights, and Exceptional Children's Assistance Centers from information during today's meeting. The OEC shared information about the school-level vacancies, a draft of the K-12 science extended content standards, an update on the rulemaking process, and upcoming SLD/AU targeted monitoring that will be assigned to teachers because of the corrective needed from an OSEP complaint. Healthy Schools shared information about the Youth Risk Behavior Survey that is given every other year to middle and high school students across the state. The panel of outside agency representatives shared the trends of concerns they are hearing and seeing from parents and from their work. Additionally, Council members were asked to review the newly release Portrait of a Graduate before the meeting to have a discussion.

Based on presented information and discussion, the Council recorded the following recommendations:

- attempt to move away from "per child" funding model; base more on the services/needs of a child so district has the appropriate amount of funding for all students; concerned this could impact identification of children because there's "no more funds" to provide any services
- request additional assistance from the state regarding nursing funding as it's a statewide issue/concern

There were three speakers for public comment today. Topics included: concerns with the policy changes made for students with a SLD, concerns about parental requests for evaluations and the school's response and suggesting changes in the way students with Autism could be taught (environment not curriculum).

Subcommittees did not meet today.

### June 2023

Today's meeting included presentations came from the OEC and included information on cases of students identified as having a Traumatic Brain Injury (TBI) as the area of eligibility, changes in personnel within the OEC, update on school-level vacancies and the rulemaking process, and information about the State's Performance Plan/Annual Performance Report submitted to OSEP. Additionally, information was shared about the work conducted between the Office of Early Learning and the ECTA/DaSy partnership, Multi-Tiered Systems of Support (MTSS) implementation across the state, and data on students with disability and discipline.

Based on presented information and discussion, the Council recorded the following recommendations:

- how staff are classified on pay scale- changed from classified to certified
- grant for other related service areas
- focus on medical positions

There was no public comment and subcommittees did not meet.

### **Council Recommendation to the State Board of Education**

1. **Hear from the ground** - invite Family Organizations who provide support to families, navigating the education system to come, speak to best practices and challenges at least once a year
  - Exceptional Children's Assistance Center (ECAC)
  - Disability Rights of NC (DRNC)
  - Legal Aid NC - Right to Education Project

## 2022 - 2023 Annual Report

- Duke Children's Law Clinic
  - Council for Children's Rights
  - Family Support Network (FSN) of NC
2. **Do a survey of other organizations that also serve families with Disabilities along with mental health concerns.**
- Local Management Entity-Managed Care Organization (LME/MCO) Family Partners and/or Family Navigators
  - Mental Health Transformation Alliance
  - NC Collaborative for Children, Youth and Families
3. **A New Wave of Evidence: The Impact of School, Family, and Community Connections on Student Achievement**
- This report confirms that the research continues to grow and build an ever-strengthening case that when schools, families, and community groups work together to support learning, children tend to do better in school, stay in school longer, and like school more. (Authors: Anne T. Henderson and Karen L. Mapp Publication Date: 2002 Publisher: Southwest Educational Development Laboratory)
  - *Research continues to support that family engagement in schools contributes to positive student outcomes, including improved child and student achievement, decreased disciplinary issues, improved parent teacher and teacher-student relationships, and improved school environment.*  
*NC Collaborative for Children, Youth and Families*

### Some Examples from the March 2023 Meeting

#### ECAC

- Interpretation at IEP meetings - in dire need of improvement, interpreters are being provided but are not familiar with special education terminology or processes which is hindering meaningful participation for parents and causing confusion.
- Missed timelines - especially for those kiddos transitioning from early intervention to preschool.
- Staff turnover, long term subs, services not delivered by someone who is qualified.
- Comparable services not being offered to students who transfer from other states with IEPs.
- MTSS - continues to be used to deny or delay evaluations; kiddos with skill deficits in many areas only getting interventions in one area, no data to support progress is being made, progress for some is minimal and many kids are so far behind that rate of progress is not enough to ever get them caught up
- Charter schools - Some are essentially operating as if they do not have the same obligations under IDEA as traditional public schools.
- Behavior concerns - Informal removals, Some LEAs are using strategies that reinforce the negative behaviors, other seem reluctant to conduct FBAs
- Nursing shortage - There are many families whose kiddos are told they must stay home due to no nurse.
- I shared that ECAC has been getting calls from families regarding their children with medical complexities not being allowed to attend school because they require 1 on 1 nursing care and schools are not able to find nurses to attend school with the kids. Some schools are offering homebound services that fulfill the special education and related services that are outlined in the child's IEP, and some are not. I provided one example of a family in Franklin County. The child is 7 and is medically fragile and requires a nurse to attend school with her. The school has not been able to find a nurse and so the child has not attended school since October of 2021. The school does

## 2022 - 2023 Annual Report

provide the related services as outlined in the IEP, but only provides one hour of special education service time per week and the mother must attend school with the child for that hour. They are calling it "homebound", but the school is requiring that the mom bring the child to the school.

- In other cases, if the nurse calls out or is going to be out on a planned absence, the child cannot attend school.
- We have also heard of other cases where the school is determining that the child's level of care can be lowered to CNA or TA against a doctor's recommendation.

The **Right to Education Project** at Legal Aid of North Carolina would like to highlight the following key issues and unmet needs related to special education students in our state:

- **Nursing shortage:** The shortage of nurses for medically high-needs students is leading to summary denials of FAPE: students are simply excluded from school due to the lack of a nurse. There is no statewide or regional infrastructure to oversee and support districts who are struggling to locate and provide nurses, and it feels as though each district is trying to solve the same problems.
- **Exclusionary discipline:** We are seeing a resurgence in cases where IEP teams are refusing to consider behavioral and emotional disabilities that, prior to MDRs, aren't specifically documented in a student's IEP, even when the parent provides documentation from medical and mental health providers. This contributes to a broader cyclic pattern of unaddressed special education issues à discipline à placement in alternative schools where children do not get services. Often, we see this drive parents to move their children out of the district to try to get a fresh start somewhere else.
- **Transportation:** Particularly in large districts, students are missing school because their special transportation does not come. Some districts are offering to compensate parents if they opt out of transportation, but this process is often broken/delayed or simply does not work for parents who have other obligations and cannot transport their child.
- **Charter Schools:** We echo the comments of our colleagues regarding charter schools inadequately serving EC students. We repeatedly see charter schools disregard the law and timelines regarding Child Find, not follow their own policies related to restorative approaches or interventions, and simply exclude or push out children through suspension and expulsion rather than support them.
- **Autism:** We are seeing a pattern related to schools being ill-equipped to understand and meet the needs of students with autism and of students with learning disabilities.
  1. Autism – We see a trend of districts looking very narrowly at what autism is or looks like. Schools will ignore outside or community-based evaluations, and refuse to evaluate further by arguing that a student doesn't have "typical" signs of autism like repetitive behavior, etc.
  2. Learning disabilities – We are continuing to see learning issues go unaddressed while the focus is placed on behaviors, which are often manifestations of the student being academically frustrated and trying to escape class.
- **Parent voice:** At the root of many of these issues is the fact that parents feel disconnected from the IEP team. Parents are not provided with material ahead of IEP meetings and often feel talked over or pushed aside. The facilitated IEP meeting process has been incredibly useful for our families, but it often comes too late and after a rift has already formed. Alternatively, schools are sometimes scheduling meetings with too little notice for the parent to successfully obtain facilitation. We would love to see more deliberate efforts to share drafts, evaluations, and data with parents ahead of time so that they are able to actively prepare to participate in meetings. Parents would benefit so much from being able to review evaluations ahead of time and, before the IEP Team meeting, ask questions of the psychologist and other evaluators.

## **Education Law Program at Council for Children's Rights**

## 2022 - 2023 Annual Report

In addition to the observations already shared, we have heard and seen some additional themes:

1. **Child Find Issues:** The first theme is continued child find issues, particularly for students who have behavioral needs.
  - For our youngest students, we are seeing schools suggest to families that the students require day treatment, a mental health service, outside of the school environment, before schools have even referred the student for or conducted a special education evaluation.
    - We recently heard of a Kindergarten student who had not been evaluated for an IEP but who was having some behavioral concerns in the classroom. Instead of initiating an EC referral, the school told the parent the student should be referred to day treatment.
    - This is particularly problematic given the inconsistent relationships between these private day treatment providers and local school districts across the state. Placements in day treatment are often resulting in issues related to the quality of education being provided and the interfering with students' ability to receive special education services.
  - For our older students, we are seeing these children find issues that result in reassignments to alternative learning programs and schools.
    - We recently worked with a high school student who had repeated the 9<sup>th</sup> grade several times, had been testing in the 1% of standardized tests since elementary school, and was experiencing some school avoidance behaviors. This student had never been evaluated for special education services. Instead of referring the student for an EC evaluation, the school told the student, "We can't do anything else for you. You should go to the alternative school until you turn 18."
2. **Intersection of Students with Disabilities and School Discipline:** Healy and Crystal touched on this already, but the next theme is issues arising at the intersection of special education and school discipline.
  - **Virtual learning**
    - Since the rise of virtual education during the pandemic, we are now hearing about virtual learning being utilized as a disciplinary consequence for some students. Unfortunately, in these circumstances, we are not seeing students' special education services and their ability to receive a FAPE in a virtual environment being considered when students are being reassigned to virtual learning as a disciplinary consequence.
  - **SPED services when a LTS or expulsion**
    - Additionally, we are seeing issues with students not receiving their special education services if they have been long-term suspended or expelled. Typically starting on the day of the short-term suspension, students are not receiving any special education services. In theory, school districts understand that students are still entitled to a FAPE even if they are long-term suspended or expelled. However, in practice, after the long-term suspension or expulsion has been implemented school districts are not reaching out to families to coordinate and set up these services.
3. **Schools not appreciating the impact of bullying on students' receipt of a free appropriate public education.**
  - Even when schools are investigating allegations of bullying, we are not seeing the additional step of holding an IEP meeting to discuss the effects of the bullying on the student to determine whether the student's special education services need to be updated as a result.
4. **Lastly, schools continue to be confused about who can and should be making special education decisions for student in foster care.**

## 2022 - 2023 Annual Report

- We continue to see schools overlooking biological parents, inappropriately allowing DSS social workers to make these decisions, or inappropriately assigning a surrogate parent. In circumstances when it is appropriate for a school to assign a surrogate parent to make special education decisions for the student in foster care, we are often seeing a lack of understanding about the role and responsibilities.
  - For instance, we have spoken with a surrogate parent who was assigned by the school to make special education decisions for a student in foster care and the surrogate parent had never spoken with the student because they did not know they were allowed to. They also had never reached out to the Child and Family Team working directly with the student meaning these individuals intimately familiar with the student's needs and backgrounds were not at the table during the IEP meeting. Essentially in this case the surrogate parent was just rubber stamping the proposed IEP from the school without ever having talked to anyone directly involved with the student.