

TORCHLIGHT ACADEMY

3211 Bramer Drive
Raleigh, NC 27604

December 14, 2021

VIA EMAIL

N.C. State Board of Education
c/o Honorable Eric Davis, Chairman
301 N. Wilmington Street
Raleigh, NC 27601-2825

**RE: RESPONSE TO CSAB AND OCS LETTER DATED DECEMBER 10, 2021,
RECOMMENDING THAT THE SBE PLACE TORCHLIGHT ACADEMY ON
LEVEL 2 GOVERNANCE PROBATIONARY STATUS**

Greetings Members of the State Board of Education:

Torchlight Academy (92L), a grades K-8 public charter school located in Raleigh, has been in operation since 1999. During the five preceding years for which official N.C. Public School Report Card data is available, Torchlight has been a consistent “C” school that consistently “exceeded expected academic growth.” The school serves a high poverty student population of more than 600 students. In 2016-2017, Torchlight achieved the highest academic growth of all public charter schools in North Carolina and was ranked in the top one percentile of all North Carolina public schools for academic growth. Torchlight Academy is known for its foreign language immersion program and for representing the United States by taking a group of at-risk students to China. Torchlight established an international sister relationship with a school in China. Pre-COVID-19, Torchlight Academy academic performance composite exceeded the local school district and the state academic performance composite by as much as 20 percentage points.

On December 7, 2021, the Charter School Advisory Board (hereinafter “CSAB”) voted to recommend to the State Board of Education (hereinafter “SBE”) that the SBE place Torchlight Academy on “Level 2 Governance Probationary Status pursuant to 16 NCAC 06G .0506(b)(2).” **Torchlight Academy formally requests that the SBE consider the entire context and give the new highly qualified EC Executive Director and new EC team adequate time to complete the corrective actions requested by the EC department. A 30-day probation period to complete the corrective action is impractical, insufficient, and inconsistent with the tenets of IDEA, which has the primary objective of providing service to EC students and support to their parents. In addition, DPI staff has already told the school that a significant number of DPI staff members who are supposed to support the school will be out for substantial periods during the holiday break, with some out for the entire two weeks. A 90-day period would be considerate of parents, students, DPI staff, and school staff and enable an appropriate resolution to the identified issues. Torchlight Academy consistently served its EC students during the COVID-19 face-to-face closures, including providing related services. We believe the CSAB’s actions are unwarranted and overly severe. Torchlight Academy’s Board of**

Directors and Management hereby requests the SBE reject the CSAB's recommendation for the following reasons:

1. Torchlight Academy was granted a "Charter" (10-year renewal) in 2014 which requires the school to comply with applicable laws and regulations related to children with special needs. (Charter, Section 5.1 and 9)
2. Torchlight Academy's "Charter" designates the school as a local education agency (LEA) for purposes of the school's special education.
3. Under the Charter School Act, N.C. Gen. Stat. § 115C-218.85(a)(4), charter schools are subject to and shall comply with Article 9 of Charter 115C of the General Statutes "Education of Children with Disabilities."
4. Article 9 of the General Statutes, specifically N.C. Gen. Stat. § 115C-107.4, provides a mandatory system of sanctions for LEAs that are substantially noncompliant with statutory and regulatory requirements under this Article and IDEA.
5. Under 115C, Article 9 "a charter school" is specifically included in the definitions of the terms Local Education Academy. N.C. Gen. Stat. § 115C-106.3(11)b.
6. The SBE adopted nearly identical language in as N.C. Gen. Stat. § 115C-107.4 in its published "Policies Governing Services for Children with Disabilities." N.C. 1505-1-9 State Enforcement."
7. The applicable state law and SBE policy provides that the system of sanctions "shall" include three separate levels of sanctions which applies to LEAs in noncompliance for two years and three years respectively which includes "Level One-Needs Assistance" and "Level Two-Needs Intervention."
8. For purposes of the exceptional children's program, Torchlight Academy's designation as an LEA place the school under the mandatory requirements of N.C. Gen. Stat. § 115C-107.4 and N.C. 1505-1-9 State Enforcement and the application of 16 NCAC 06G .0506 Charter Schools Governance Noncompliance is unwarranted and should not apply at this time as it is preempted by graduated sanctions required by the "Charter," "State Law," and "applicable "SBE Policies Governing Services to Children with Disabilities."
9. The "Charter Schools Governance Noncompliance" policy in 16 NCAC 06G .0506 purposefully does not specifically mention exceptional children's program noncompliance because the Legislature and the SBE otherwise provided a graduated system of sanctions to address exceptional children's noncompliance.
10. Post-pandemic (return to face-to-face instruction) once Torchlight had actual notice of EC noncompliance the school immediately and voluntarily created an internal EC Task Force to address EC noncompliance and the school increased its capacity to correct noncompliance by hiring a new highly qualified EC Executive Director, a new EC Compliance Officer, and other new highly qualified EC personnel with a mandate to achieve full compliance as soon as practical.

CSAB's recommendation of a 30-day probationary period did not appear to consider the imminent winter break, the convenience of parents to participate in IEP meetings for the holiday season, DPI support staff being out of office, and other factors which make a 30-day probationary period impractical and does not consider what is actually required to be corrected to achieve compliance. In addition, most of the items to be corrected were first identified to the school as being noncompliant in the October 7, 2021 EC Monitoring Report.

Unfortunately, the Office of Charter Schools (OCS) and the EC Division initially chose to take an adversarial position against Torchlight Academy and exaggerated the purported noncompliance rather than genuinely providing technical assistance and support to the school to help the school resolve any actual noncompliance issues of concern.

The State's EC Division itself is currently in a noncompliance "Needs Assistance" status with the U.S. Department of Education, Office of Special Programs according to a letter dated June 24, 2021, from Acting Director David Cantrell to NCDPI Superintendent Catherine Truitt. We do not claim to be perfect, and we are working diligently to correct all noncompliance, but we are deeply concerned that the EC Division has failed to appropriately communicate with us and appears intent upon covering its own inability to provide actual and meaningful notice of alleged continuing violations and technical assistance that would resolve the outstanding concerns by supporting the school and its EC student population.

CSAB, through the OCS Director, states their recommendation is based upon eight findings. We restate the finding and provide a response to each below:

Finding 1: Grossly negligent administrative oversight of the EC program.

Response 1: "Gross negligence" is a common law tort in the State of North Carolina which requires specific findings of fact and conclusions of law. CSAB has not made a proper inquiry to make such a determination and does not state its findings and conclusions. In addition, both CSAB and OCS exceed their authority granted under N.C. Gen. Stat. § 115C-218(b)(10)c. and N.C. Gen. Stat. § 115C-218 (c)(3) given the mandatory language in N.C. Gen. Stat. § 115C-107.4.

The EC Division reported in its "October 7, 2021 EC Monitoring Report" that Torchlight did not correct noncompliance identified in a routine five year EC Monitoring held on February 26, 2020. The records show that the EC Division requested outstanding records on March 12, 2020, the day before the Governor declared a state of emergency due to COVID-19 pandemic. The school was required to shift to Remote Instruction and address the many complications accompanying the same. Only a few schools in the entire state were in the EC Monitoring process when the COVID-19 pandemic hit. The EC Division failed to effectively communicate to Torchlight's board or management that there were outstanding items from the February 26, 2020 EC Monitoring after the April 2020 report until the October 7, 2021 EC Monitoring Report. The EC Division claimed it emailed the final report and corrective action requirements in April 2020 but says they did not send a copy through the U.S. Postal Service. The EC Division claims the school remained noncompliant from April 2020 based upon its review of ECATS records on September 14-16, 2021 from a sample of 5 student records, three of which were students that had withdrawn from the school. The Board, Officers, and Executive Management of Torchlight operated under the belief that the April 2020 EC noncompliance had been satisfactorily resolved. The EC Division never attempted to follow-up to our knowledge. The EC Division subsequently marked Torchlight as "Compliant" for its EC Program in the 2020 Performance Framework which covered the 2019-2020 school year (the year the noncompliance was found). It is our understanding that if the noncompliance was not already resolved the school would not have been marked "Compliant" in the 2020 Performance Framework. All the other items purported to be noncompliant in the October 7, 2021 EC Monitoring Report were new items from the September 2021 unannounced

monitoring visit and ECATS records review conducted on September 14-16, 2021. The clock on those noncompliance items would start running on October 7, 2021 when the school was provided notice of the noncompliance. The reported sampling of 5 student records from the February 2020 report appears to be an afterthought and an improper attempt to revive purported noncompliance from the February 2020 monitoring visit. The two student sample records support the view that the school was in substantial compliance and the original judgment to mark Torchlight Academy as “Compliant” for EC on the 2020 Performance Framework was in fact a correct report of the school’s compliance status at the end of the 2019-2020 school year.

Once Torchlight received proper notice of noncompliance in the October 7, 2021 EC Monitoring Report the school immediately established an internal Task Force to address the EC noncompliance issues. The school took appropriate personnel action based upon the information available at the time. The school hired a new highly qualified EC Executive Director, a new EC Compliance Officer, and other appropriate licensed EC personnel to substantially increase the school’s capacity to correct EC noncompliance. The new EC Executive Director holds a North Carolina Superintendent’s License, Principals License, EC Administrator’s License, and an EC Teaching License. Torchlight’s EC Director has extensive experience helping schools resolve EC noncompliance. There is no reasonable basis in fact to conclude that Torchlight currently lacks the capacity to resolve the alleged EC noncompliance issues within the context of existing law and within a reasonable time. In addition, the EC Division has failed to grant appropriate level access to the ECATS system to Torchlight’s new EC Executive Director. The finding of “Grossly negligent administrative oversight” is unsupported and clearly erroneous.

Finding 2: Failure to properly implement the Individualized Education Program process as mandated by the Individuals with Disabilities in Education Act.

Response 2: Over the past almost 20 years Torchlight has been serving students, EC student instruction occurred daily for all EC students. When the EC Division monitoring team conducted its unannounced visit in September 2021 the school had just fully returned to face-to-face instruction. The school’s EC Program had operated from remote locations during the extraordinary circumstances caused by the pandemic, and all student records were not centrally filed at that time. Therefore, the EC Division monitoring team assumed that records did not exist. The school subsequently assembled the EC student records in the central filing system at the school and made the records available to the EC Division the following day. Furthermore, all required EC personnel at the school have completed the ECATs training and the school’s EC team has made substantial progress on updating the electronic records in ECATS albeit without sufficient access. The school’s new EC Executive Director and team have been working to meticulously implement the IEP process as mandated by the IDEA and to make all corrective action.

The IEP process mandated by the IDEA was substantially followed but some documentation was not in the central files during the EC Division’s unannounced monitoring visit. In addition, the former EC Director at Torchlight was under the belief there were technical problems with the ECATS system.¹ Subsequently, we learned that the Torchlight EC Director’s Level 4 ECATS

¹ The EC Division of NCDPI improperly suspended all of the school’s personnel access to ECATs June of 2021 without warning or notice for over four (4) months. During the interim, the school’s personnel sought assistance from technical support as to why access to the ECATs system was not working. Nevertheless, the EC Division

access rights had been intentionally revoked by the EC Division without placing Torchlight board or management on notice of the revocation for about four months.

Finding 3: Alteration and falsification of EC student records.

Response 3: The OCS/CSAB letter dated December 10, 2021, is the very first time the term “falsification” has been used regarding this situation. The EC Division has provided no evidence to Torchlight’s Board or management that records were intentionally improperly altered as suggested by the December 10, 2021 letter. In fact, Department of Public Instruction EC Division staff communicated to Torchlight personnel that the alleged records altered in ECATs was not done with malicious intent but was rather, “the result of user error.”

Finding 4: Lack of federally mandated “Maintenance of Effort” for the previous three (3) consecutive years.

Response 4: Torchlight Academy has not received technical assistance from the EC Division regarding MOE. The school made errors in calculating MOE expense through miscoding by staff. The staff has completed MOE training internally and has implemented policies and procedures to ensure correct MOE going forward, including an annual MOE budget. In addition, 2017 expenses were spiked by extraordinary expenses which were not computed to reduce the 2017 MOE. Subsequent MOE’s were not met due to the spike in MOE from 2017. The school is seeking technical support and assistance from the EC Division to resolve prior year MOEs. The school expended adequate local and state funds to support the EC program but did not receive proper credit for the expenditures due to coding issues.

Finding 5: Inability and/or failure to provide access by NCDPI EC staff to EC student and finance records when requested.

Response 5: The EC Division and OCS made an unannounced monitoring visit on the heels of the COVID-19 pandemic after staff had worked from remote locations for more than a year. If the visit had been announced the school could have timely assembled all the records into a central location. The school made appropriate response within a reasonable time. As of the December 7, 2021 CSAB meeting Torchlight had not received a response from the EC Division regarding whether the records provided were in fact sufficient even though the records were uploaded and provided on October 18, 2021, almost a month and half prior to the December 7, 2021 meeting before the CSAB.

Finding 6: Lack of qualified staff in the EC program.

Response 6: The EC Division claims that one of Torchlight’s EC teachers did not have a valid EC teaching license. The EC Division claims one EC Teacher’s license expired in the 1960’s. This

identifies as a deficiency a report that was to be filed between August 1 and August 19, 2021, when school personnel did not have access and was not notified of the suspended access. The EC Division then mischaracterizes the school’s attempt on August 23, 2021, to obtain assistance with access to ECATs as a basis to support its conclusion that the required report was untimely. Such action only demonstrates the EC Division ensured an untimely report would be a fait accompli.

was concluded before clarification could be provided that her name had changed due to marriage. The individual in question has held a valid NC EC license for many years including the time period for which she was paid under IDEA PRC 060. Her license most recently expired June 2021. She has completed all necessary training and an application has been submitted to renew her EC License. All other staff have valid EC licenses.

Finding 7: Falsely reporting staff's compliance with Every Child Accountability and Tracking Systems (ECATS) training.

Response 7: It was reported by the State Director of the EC Division that Torchlight's former EC Director reported all staff at Torchlight had completed the ECATS training when they in fact had not completed the ECATS training at that time. If a false report was known to the EC Division it was not reported to the Torchlight Academy Board or Management until October 7, 2021 in the EC Monitoring Report. The October 7, 2021 report says "EC coordinator emailed confirming completion of the Google form and acknowledging that training had been completed with staff in January." From the record, there may be two separate training in issue. This State Director's may be conflating two separate training issues and making another unfounded defamatory allegation.

Finding 8: Failure to provide all documentation requested by DPI's EC Division.

Response 8: Torchlight Academy has substantially complied with all documentation requests made by DPI's EC Division. CSAB and OCS did not specifically identify which documents are alleged to not have been provided as of the date of the CSAB meeting on December 7, 2021.

CONCLUSION

Torchlight Academy requests the SBE find that the February 26, 2020, monitoring visit corrective action be deemed substantially compliant as of the close of the 2019-2020 school year. It further requests that the clock for making corrective action based upon the October 7, 2021, EC Monitoring Report start effective with the date Torchlight Academy received the report. Torchlight Academy also requests that the SBE require the EC Division, CSAB, and OCS to properly observe the state law found in *N.C. Gen. Stat. § 115C-107.4* and state policy found in *NC 1505-1.9* before escalating these matters in light of the timing of the notices actually provided for the alleged issues.

Torchlight Academy has been successfully operating since 1999 and these purported incidences of not fixing alleged noncompliance issues during the COVID-19 pandemic should not be a basis to close this school and cause injury to hundreds of students, families, and staff connected to Torchlight Academy. Torchlight Academy formally requests that the SBE consider the entire context and give the new highly qualified EC Executive Director and new EC team adequate time to complete all current corrective actions and begin completing any compensatory services that may be identified in the corrective action process. A 30-day probation period to complete the corrective action is impractical, insufficient, and inconsistent with the tenets of IDEA, which has the primary objective of providing service to EC students and support to their parents. In addition, DPI staff has already told the school that a significant number of staff members that support the school will be out for substantial periods during the holiday break, with

some out for the entire two weeks. A 90-day period would be considerate of parents, students, and staff and enable an appropriate resolution to the identified issues of concern.

Torchlight Academy consistently served its EC students during the COVID-19 face-to-face closures, including providing related services. Only a very small number of schools in North Carolina have been placed under this scrutiny as a result of the monitoring schedule, which was affected by the timing convergence with the COVID-19 pandemic. Notably, DPI's EC Division was previously placed on "Level One: Needs Assistance" status by the USDOE, Office of Special Education and Rehabilitation in 2019 and again in 2021. According to the Office of Special Programs, ["No state or entity received a determination of Level Two: Needs Intervention" due solely to data impacted by the COVID-19 pandemic.]. Nevertheless, Torchlight Academy is being judged by such a standard despite the identified discrepancies in the EC Division's presentation to the CSAB.

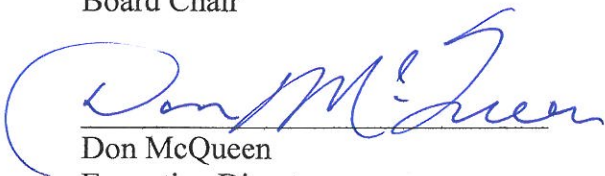
It is ironic and not lost on the Board, the staff, and the community that Torchlight Academy serves, which is approximately 88% African American and Latino, that it operates within the 18th largest school district in the country and has repeatedly outperformed that school district. Contrastingly, the 18th largest school district in the country has been the subject of State complaints for failing to provide appropriate services to disabled students by the Advocates for Justice on four (4) separate occasions since 2009, yet it has not been subjected to potential closure for failing to meet the needs of thousands of disabled students in its care. Conversely, during the CSAB meeting the EC Division stated it was making the recommendations based upon eighteen students. Let it be known that Torchlight Academy can and will cure any and all concerns related to those eighteen students but for the sake of the remaining almost six hundred students Torchlight Academy should not be threatened with closure. Torchlight Academy can and will resolve the legitimate concerns identified given sufficient time and technical support and assistance as required by federal law.

In addition to the foregoing response, Torchlight Academy has simultaneously herewith provided additional supplemental information to the EC Division addressing many of the concerns raised, including but not limited to a plan of correction that will provide compensatory services to those eighteen students where appropriate.

Very sincerely,



Dr. Pam Banks-Lee
Board Chair



Don McQueen
Executive Director

§ 115C-107.4. Monitoring and enforcement.

(a) The State Board shall monitor all local educational agencies to determine compliance with this Article and IDEA. The State Board also shall monitor the effectiveness of IEPs in meeting the educational needs of children with disabilities.

(b) The State Board shall implement an effective and efficient system of incentives and sanctions for local educational agencies in order to improve results for children with disabilities and meet the requirements of this Article and IDEA. The system, which must be based on a continuum of recognition and sanctions, shall:

- (1) Identify and recognize local educational agencies that achieve or exceed targets and indicators as determined by the State Board, demonstrate significant improvement over time, and show growth on targets and indicators as determined by each local educational agency.
- (2) Provide consequences for local educational agencies that are substantially noncompliant with statutory and regulatory requirements under this Article and IDEA.

(c) The system of incentives developed under subsection (b) of this section may include commendations, public recognition, allocation of grant funds if available, and any other incentives as considered appropriate by the State Board.

(d) The system of sanctions developed under subsection (b) of this section shall include the following:

- (1) Level One – Needs Assistance: When the State Board determines (i) a local school educational agency has been in noncompliance for two years and (ii) that agency needs assistance in implementing the requirements of this Article and IDEA, the State Board shall take one or more of the following actions:
 - a. The Board may direct the local educational agency to allocate additional time and resources for technical assistance and guidance related to areas of noncompliance.
 - b. The Board may impose special conditions on that agency's application for IDEA funds and receipt of State funds.
 - c. The Board may direct how that local educational agency utilizes IDEA and State funds to address the remaining findings of noncompliance. The local educational agency must track the use of these funds to show how the funds are targeted to address areas of noncompliance.
- (2) Level Two – Needs Intervention: If the State Board determines (i) that the local educational agency has been in noncompliance for three years and (ii) that agency needs assistance in implementing this Article and IDEA, the following apply:
 - a. The Board may take any of the actions described in subdivision (1) of this subsection.
 - b. The Board shall withhold, in whole or in part, any further payments of IDEA and State funds to the agency.
 - c. The Board shall require the agency to enter into a compliance agreement.
- (3) Level Three – Needs Substantial Intervention: In addition to the sanctions described in subdivisions (1) and (2) of this subsection, if at any time the State Board determines a local educational agency (i) needs substantial intervention in implementing the requirements of this Article and IDEA, or

(ii) has established a substantial failure to comply with this Article and IDEA, the Board shall take one or more of the following actions:

- a. The Board shall direct the agency to implement a compliance agreement, billed to that agency.
- b. The Board shall recover IDEA and State funds.
- c. The Board shall refer the agency for appropriate enforcement under State or federal law.

(e) In addition to the consequences required under subsections (b) and (d) of this section, the State Board shall develop sanctions for local educational agencies that fail to implement a corrective action or hearing decision. (1977, c. 927, s. 1; 1981, c. 423, s. 1; 1983, c. 247, ss. 3, 4; 1989, c. 585, s. 3; 1996, 2nd Ex. Sess., c. 18, ss. 18.24(c), (d); 1997-443, s. 11A.118(a); 1998-202, s. 4(g); 2000-137, s. 4(j); 2006-69, s. 2.)

(1995 (Reg. Sess., 1996), c. 731, s. 2; 1997-430, s. 5; 1997-443, s. 8.19; 1997-456, s. 55.4; 1998-212, s. 9.14A(a); 1999-243, s. 8; 2001-462, s. 1; 2004-118, s. 3; 2004-203, s. 45(b); 2006-69, s. 3(e); 2006-137, s. 2; 2007-59, s. 2; 2007-126, s. 2; 2007-323, s. 28.22A(o); 2007-345, s. 12; 2009-239, s. 1; 2009-563, s. 2; 2010-10, s. 2(a); 2011-93, s. 2(a); 2011-145, s. 7.29(b); 2011-164, s. 4; 2011-282, s. 9; 2012-142, ss. 7A.1(f), 7A.3(c), 7A.11(b); 2012-145, s. 2.5; 2012-179, s. 1(c); 2013-307, s. 1.1; 2013-355, s. 1(f); 2013-359, s. 1; 2013-360, ss. 8.43(a), 9.7(q); 2014-100, ss. 8.23(b), 8.32(b); 2014-101, s. 7; 2015-241, s. 8.26(h); 2015-249, s. 3; 2018-5, s. 7.26(c); 2019-245, s. 4.4(b); 2020-7, s. 1(c).)

§ 115C-218.80. Display of the United States and North Carolina flags and the recitation of the Pledge of Allegiance.

A charter school shall (i) display the United States and North Carolina flags in each classroom when available, (ii) require the recitation of the Pledge of Allegiance on a daily basis, and (iii) provide age-appropriate instruction on the meaning and historical origins of the flag and the Pledge of Allegiance. A charter school shall not compel any person to stand, salute the flag, or recite the Pledge of Allegiance. If flags are donated or are otherwise available, flags shall be displayed in each classroom. (1995 (Reg. Sess., 1996), c. 731, s. 2; 1997-430, s. 5; 1997-443, s. 8.19; 1997-456, s. 55.4; 1998-212, s. 9.14A(a); 1999-243, s. 8; 2001-462, s. 1; 2004-118, s. 3; 2004-203, s. 45(b); 2006-69, s. 3(e); 2006-137, s. 2; 2007-59, s. 2; 2007-126, s. 2; 2007-323, s. 28.22A(o); 2007-345, s. 12; 2009-239, s. 1; 2009-563, s. 2; 2010-10, s. 2(a); 2011-93, s. 2(a); 2011-145, s. 7.29(b); 2011-164, s. 4; 2011-282, s. 9; 2012-142, ss. 7A.1(f), 7A.3(c), 7A.11(b); 2012-145, s. 2.5; 2012-179, s. 1(c); 2013-307, s. 1.1; 2013-355, s. 1(f); 2013-359, s. 1; 2013-360, ss. 8.43(a), 9.7(q); 2014-101, s. 7.)

§ 115C-218.85. Course of study requirements.

- (a) Instructional Program. –
 - (1) The school shall provide instruction each year for at least 185 days or 1,025 hours over nine calendar months.
 - (2) The school shall design its programs to at least meet the student performance standards adopted by the State Board of Education and the student performance standards contained in the charter.
 - (3) A charter school shall conduct the student assessments required by the State Board of Education.
 - (4) The school is subject to and shall comply with Article 9 of Chapter 115C of the General Statutes and The Individuals with Disabilities Education Improvements Act, 20 U.S.C. § 1400, et seq., (2004), as amended.
 - (5) A charter school shall provide financial literacy instruction as required by the State Board of Education pursuant to G.S. 115C-81.65, including required professional development for teachers of the EPF course.
- (b) Reading Proficiency and Student Promotion. –
 - (1) Students in the third grade shall be retained if the student fails to demonstrate reading proficiency by reading at or above the third grade level as demonstrated by the results of the State-approved standardized test of reading comprehension administered to third grade students. The charter school shall provide reading interventions to retained students to remediate reading deficiency, which may include 90 minutes of daily, uninterrupted, evidence-based reading instruction,

For purposes of this part, if responsibility for ensuring that the requirements of Part B of the IDEA are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons is assigned to a public agency other than the SEA pursuant to NC 1501-9.1 , and if the Secretary finds that the failure to comply substantially with the provisions of Part B of the IDEA are related to a failure by the public agency, the Secretary takes appropriate corrective action to ensure compliance with Part B of the IDEA, except that--

- (a) Any reduction or withholding of payments to the State under 34 CFR 300.604 must be proportionate to the total funds allotted under section 611 of the IDEA to the State as the number of eligible children with disabilities in adult prisons under the supervision of the other public agency is proportionate to the number of eligible individuals with disabilities in the State under the supervision of the SEA; and
- (b) Any withholding of funds under CFR 300.604 must be limited to the specific agency responsible for the failure to comply with Part B of the IDEA.

(Authority: 20 U.S.C. 1416(h); 34 CFR 300.607)

NC 1505-1.9 State Enforcement

- (a) A system of incentives and sanctions has been implemented for LEAs in order to improve results for children with disabilities and meet the requirements of the IDEA. The system shall:
 - (1) Identify and recognize LEAs that achieve or exceed targets and indicators as determined by the State Board, demonstrate significant improvement over time, and show growth on targets and indicators as determined by each LEA.
 - (2) Provide consequences for LEAs that are substantially noncompliant with statutory and regulatory requirements.
- (b) The system of incentives may include commendations, public recognition, allocation of grant funds if available, and any other incentives as considered appropriate by the State Board.
- (c) The system of sanctions shall include the following:
 - (1) Level One – Needs Assistance: When it is determined that an LEA has been in noncompliance for two years, and the LEA needs assistance in implementing the requirements of IDEA, one or more of the following actions shall be taken:
 - (i) The LEA may be directed to allocate additional time and resources for technical assistance and guidance related to areas of noncompliance.
 - (ii) Special conditions may be imposed on the LEA’s application for IDEA funds and receipt of State funds.
 - (iii) The use of IDEA and State funds may be directed to address the remaining areas of non-compliance.
 - (iv) The LEA must track the use of these funds to show how the funds are targeted to address areas of noncompliance.
 - (2) Level Two – Needs Intervention: When it is determined that an LEA has been in noncompliance for three years, and the LEA needs assistance in implementing the requirements of IDEA, the following apply:
 - (i) Any of the actions described in (c)(1) of this section may be taken.
 - (ii) Any further payment of IDEA and State funds to the LEA shall be withheld, in whole or in part.
 - (iii) The LEA shall be required to enter into a corrective action plan.
 - (3) Level Three – Needs Substantial Intervention: In addition to the sanctions described in (c)(1) and (c)(2) of this section, if it is determined that an LEA needs substantial intervention in implementing the requirements of IDEA, one or more of the following actions shall be taken:
 - (i) The LEA shall be directed to implement a compliance agreement, billed to the LEA.
 - (ii) IDEA and State funds shall be recovered.
 - (iii) The LEA shall be referred for appropriate enforcement under State or federal law.
 - (4) In addition to the consequences required under (c) of this section, sanctions shall be applied to all LEAs that fail to implement a corrective action or hearing decision.