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September 14, 2016

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Ms. Trinell Bowman
Director of Special Education
Prince George's County Public Schools
John Carroll Elementary School
1400 Nalley Terrace
Landover, Maryland 20785

RE: Prince George's County Child Find Procedures
Reference: #17-011

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Special Education/Early Intervention Services (DSE/EIS), has completed the investigation of the complaint regarding similarly situated students. This correspondence is the report of the final results of the investigation.

ALLEGATION:

On July 18, 2016, the MSDE received a complaint from Ms. XXXXXXXXXX hereafter, "the complainant," on behalf of students with visual impairments. In that correspondence, the complainant alleged that the Prince George's County Public Schools (PGCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to students with visual impairments.

The MSDE investigated the allegation that the PGCPS does not follow proper procedures when determining whether a student meets the criteria for identification as a student with a Visual Impairment under the IDEA, in accordance with 34 CFR §§300.08, .34, .39, and .301 - .306.

INVESTIGATIVE PROCEDURES:

1. On June 28, 2016, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, conducted a telephone interview with the complainant about the allegation.
2. On July 29, 2016, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this

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investigation. On the same date, the MSDE notified the PGCPS of the allegation and requested that the school system staff conduct review of the matter.

3. On August 23, 2016, the MSDE requested documentation from the PGCPS.
4. On August 30, 2016 and September 1, 2016, the PGCPS provided the MSDE with documentation for consideration.
5. On September 12, 2016, Ms. Mandis and K. Sabrina Austin, Education Program Specialist, MSDE, conducted a telephone interview with Ms. Deborah Anzelone, Instructional Supervisor, PGCPS, and Ms. Lisa Wright, Instructional Specialist, PGCPS Vision Program. Ms. Kerry Morrison, Special Education Instructional Specialist, PGCPS, also participated in the telephone interview as a representative of the PGCPS and to provide information on the school system's policies and procedures, as needed.
6. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. The PGCPS Special Education Process Guide, May 2012;
 - b. The PGCPS brochures describing student eligibility for visions services, current and prior versions, undated;
 - c. Description of the PGCPS Vision Program as of September 12, 2016, PGCPS website;
 - d. MSDE *Memorandum to Local Directors of Special Education*, dated July 18, 2016; and
 - e. Correspondence from the complainant alleging a violation of the IDEA, received by the MSDE on July 16, 2016.

FINDINGS OF FACTS:

1. The PGCPS has developed a Special Education Process Guide (the PGCPS Guidelines) that includes information concerning identification of students with visual impairments. The PGCPS Guidelines state that "a student is eligible for special education if he or she has a disability listed under the IDEA and as a result of that disability requires specialized instruction to benefit from the general curriculum. The PGCPS Guidelines specifically identify "visual impairment – including Blindness" as a disability recognized under the IDEA (Doc. a).
2. The PGCPS Guidelines require that, in order to be eligible for special education services due to a visual impairment, a student must meet "one or more of the following criteria from an eye medical report:
 - i) Monocular vision with corrected acuity of 20/50 or less in the better eye;
 - ii) Visual field of 20 degrees or less;
 - iii) Vision loss that is fluctuating or progressive; or
 - iv) Cortical visual impairment" (Doc. a and interview with the school system staff).

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3. Prior to the start of the investigation, the PGCPS maintained a brochure describing its procedures for determining the eligibility of a visually impaired student for specialized instruction (PGCPS Vision Program Brochure). A review of the PGCPS Vision Program Brochure reflects that it included information consistent with the eligibility requirements set forth in the PGCPS Guidelines, limiting the definition of a visual impairment to four (4) specific categories of vision conditions and diagnoses (Doc. b and interview with the school system staff).
4. On July 18, 2016, the MSDE issued a *Memorandum to Local Directors of Special Education* providing guidance on the definition of “visual impairment” for purposes of eligibility under the IDEA (July 2016 MSDE Guidance). The July 2016 MSDE Guidance states that a “visual impairment, for purposes of eligibility under the IDEA means ‘an impairment in vision that, even with correction, adversely affects a child’s educational performance.’” It further states that “local school systems may not use criteria or other, narrower definitions of ‘visual impairment’ that result in the exclusion of students who otherwise meet the definition in the IDEA” (Doc. d).
5. During the course of the investigation, and in response to the July 2016 MSDE Guidance, the PGCPS revised its PGCPS Vision Program Brochure by removing the language that limited the definition of a visual impairment under the IDEA to only those vision conditions or diagnosis within four (4) specific categories. Instead, it states that eligibility is based on the following data:
 - A recent report from an ophthalmologist or optometrist indicating an impairment in vision; and
 - An assessment by a Teacher of the Blind/Visually Impaired that includes a functional vision assessment, a learning medium assessment, and an assessment in other areas of the curriculum, as needed; and
 - An assessment by an Orientation and Mobility Specialist that includes the ability to function in familiar and unfamiliar areas, under various lighting condition, and that considers current and future needs; and
 - An IEP team decision regarding the impact of the visual impairment and the need for specialized instruction.

The school system staff report that the assessment data listed in the brochure would be used to determine whether, as a result of a vision problem that impacts a student’s education, the student requires specialized instruction (Doc. b and interview with the school system staff).

DISCUSSION/CONCLUSIONS:

The State of Maryland must ensure that all students with disabilities residing in the State are identified, located, and evaluated (34 CFR §300.111). The “Child Find” requirements of the IDEA impose an affirmative obligation on the school system to identify, locate, and evaluate all students residing within its jurisdiction who have disabilities and need special education and

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related services, or who are suspected of having disabilities and being in need of special education and related services (34 CFR §300.111 and COMAR 13A.05.02.13).

Under the IDEA, a Visual Impairment means impairment in vision that, even with correction, adversely affects a child's educational performance. The IDEA specifically states that both partial sight and blindness constitute visual impairments. However, the United States Department of Education, Office of Special Education and Rehabilitative Services (OSERS) has indicated that States may not exclude students with convergence insufficiency or other visual impairments from meeting the definition of Visual Impairment under the IDEA if the condition adversely affects their educational performance [Emphasis added] (34 CFR §300.8 and *Letter to Kotler*, November 12, 2014).

In this case, the complainant alleges that the PGCPS excludes convergence insufficiency from the definition of a visual impairment under the IDEA (Doc. e).

Based on the above Findings of Facts #1 - #4, the MSDE finds that, for purposes of determining eligibility for special education and related services under the IDEA, the PGCPS adopted procedures that limited the definition of a visual impairment to four (4) specific categories of vision conditions and diagnoses, thereby excluding other categories of visual impairment, such as convergence insufficiency. Therefore, the MSDE finds that the PGCPS's procedures were not consistent with the IDEA and the MSDE guidance, and that a violation occurred.

Based on the Finding of Fact #5, the MSDE finds that the PGCPS is taking steps to develop procedures that are consistent with the IDEA and MSDE guidance. However, based on the same Finding of Fact, the MSDE finds that the current procedures in the revised PGCPS Vision Program Brochure, as stated, could be read to indicate that the listed assessments are required prior to an IEP team determination that the vision problem impacts the student's education. Therefore, the MSDE finds that the brochure is not written clearly with respect to the sequencing of the procedures to be followed when a referral for an IDEA evaluation is made.

CORRECTIVE ACTIONS/TIMELINES:

The MSDE requires the PGCPS to provide documentation, by December 1, 2016, that its procedures for evaluating students for a Visual Impairment under the IDEA, including procedures described in the PGCPS Guidelines and maintained on the PGCPS website, have been revised consistent with the July 2016 MSDE Guidance, and guidance from the Maryland State Steering Committee for Programs Serving Students with Visual Impairments which is expected to address the matter at the end of September 2016.

The MSDE requires the PGCPS to provide documentation by January 1, 2017 that notice has been provided to the parents of all PGCPS students, or notice is provided on the PGCPS website, of the revised procedures for evaluating students for a Visual Impairment under the IDEA and of the right to request an evaluation if a parent suspects that their child meet the criteria for identification as a student with a Visual Impairment under the IDEA.

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Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Family Support and Dispute Resolution Branch, Division of Special Education/Early Intervention Services, MSDE.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties by contacting Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE at (410) 767-7770.

Please be advised that the PGCPS and the complainant have the right to submit additional written documentation to this office within fifteen (15) days of the date of this letter if they disagree with the findings of facts or conclusions reached in this Letter of Findings. The additional written documentation must not have been provided or otherwise available to this office during the complaint investigation and must be related to the issues identified and addressed in the Letter of Findings. If additional information is provided, it will be reviewed and the MSDE will determine if a reconsideration of the conclusions is necessary.

Upon consideration of this additional documentation, this office may leave its findings and conclusions intact, set forth additional findings and conclusions, or enter new findings and conclusions. Pending the decision on a request for reconsideration, the school system must implement any corrective actions within the timelines reported in this Letter of Findings.

Questions regarding the findings, conclusions and corrective actions contained in this letter should be addressed to this office in writing.

Sincerely,

Marcella E. Franczkowski, M.S.
Assistant State Superintendent
Division of Special Education/Early Intervention Services

MEF:ksa

c: Kevin Maxwell
Gwendolyn Mason
LaRhonda Owens
Kerry Morrison
Dori Wilson
Anita Mandis
K. Sabrina Austin