



200 West Baltimore Street • Baltimore, MD 21201 • 410-767-0100 • 410-333-6442 TTY/TDD • msde.maryland.gov

September 23, 2016

XXX
XXX
XXX

Mr. Nicholas Shockney
Director of Special Education
Carroll County Public Schools
125 North Court Street
Westminster, Maryland 21157

RE: XXXXXX and similarly-situated students
Reference: #17-009

Dear Parties:

The Maryland State Department of Education, Division of Special Education/Early Intervention Services (MSDE), has completed the investigation of the complaint regarding special education services for the above-referenced student. This correspondence is the report of the final results of the investigation.

ALLEGATIONS:

On July 18, 2016, the MSDE received a complaint from Ms. XXXXXXXXXX hereafter, “the complainant.” In that correspondence, the complainant alleged that the Carroll County Public Schools (CCPS) did not follow proper procedures when determining whether the student and similar-situated students meet 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 July 26, 2016, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint.
2. On July 27, 2016, the MSDE sent correspondence to the complainant that identified the allegation to be investigated. On the same date, the MSDE notified the CCPS of the allegation and requested that the school system review the alleged violation.
3. On August 31, 2016, Mr. Albert Chichester, Complaint Investigator, MSDE, conducted an interview with Mr. Wayne Whalen, Coordinator of Compliance, CCPS, to discuss the allegation.

XXX

Mr. Nicholas Shockney

September 23, 2016

Page 2

4. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Individualized Educational Program (IEP), dated April 21, 2016;
 - b. IEP meeting summary, dated October 1, 2015;
 - c. IEP meeting summary, dated February 3, 2016;
 - d. IEP meeting summary, dated March 22, 2016;
 - e. IEP meeting summary, dated April 21, 2016;
 - f. Evaluation and Identification protocol for determining eligibility of students with Visual Impairment, including Blindness for special education services;
 - g. The CCPS Eligibility Determination Form for students not currently identified with the disability of Visual Impairment;
 - h. The CCPS Eligibility Determination Form for students currently identified with the disability of Visual Impairment;
 - i. Correspondence, dated September 15, 2016, between the MSDE and the CCPS Central Office staff; and
 - j. Correspondence from the complainant alleging a violation of the IDEA, received by the MSDE on July 26, 2016.

BACKGROUND:

The student is 12 years old and is identified as a student with Autism under the IDEA. He attends the XXXXXXXXXXXXXXXXXXXX and has an IEP that requires the provision of special education instruction and related services (Docs. a - e).

During the time period covered by this investigation, the student's parent participated in the education decision-making process and was provided with written notice of the procedural safeguards (Docs. a - e).

FINDINGS OF FACTS:

1. The CCPS policy states that a student may be determined to be a student with a Visual Impairment, under the IDEA, if there is documentation of at least one of the following:
 - a. Central visual acuity of 20/70 or less in the better eye after conventional correction;
 - b. Reduced visual field to 20 degrees or less in the better eye;
 - c. Other ocular pathologies that are permanent and irremediable;
 - d. Cortical visual impairment;
 - e. A degenerative condition that is likely to result in a significant loss of vision in the future (Docs. f - h).
2. The CCPS acknowledges that its procedures for evaluating students for a Visual Impairment under the IDEA are not consistent with the July 18, 2016 MSDE *Memorandum to Local Directors of Special Education*, which states that students with convergence insufficiency may not be categorically excluded from eligibility under the IDEA. The CCPS proposes to revise its procedures for evaluating students for a Visual

Impairment under the IDEA consistent with the MSDE guidance, and will ensure consistency with the recommendations of a Maryland State Steering Committee for Programs Serving Students with Visual Impairments, which is scheduled to address the issue in September 2016 (Docs. f – j, and an interview with Central Office staff).

3. There is no documentation that a re-evaluation was requested or conducted to determine if the student had a Visual Impairment during the time period covered by this investigation (Docs. a - e).

DISCUSSION/CONCLUSIONS:

Under the IDEA, a student with a disability is a student who has been evaluated as **having one of a list of impairments, including a Visual Impairment**, and who, by reason thereof, **requires special education**¹ and related services, which are provided through an **Individualized Education Program** [Emphasis added] (34 CFR §§300.08 and .101).

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).

When conducting an IDEA re-evaluation, the public agency must review the existing data, including evaluations, information provided by the student's parents, classroom-based assessments, and observations conducted by teachers. On the basis of that review, the public agency must determine whether additional data is needed and if so, it must ensure that assessments and other evaluation measures needed to produce the data are conducted and the results are considered by the IEP team in determining whether the student meets the criteria for identification as a student with a disability under the IDEA (34 CFR §§300.301 - .306).

Therefore, if a student with convergence insufficiency is referred for an IDEA evaluation, the public agency must review existing data, including evaluations, information provided by the student's parents, classroom-based assessments, and observations conducted by teachers, and determine whether additional data is needed. If additional data is required, the public agency must ensure that it is obtained. Based on the data, the IEP team must **determine whether the convergence insufficiency impacts the student's education**. If the team determines that the convergence insufficiency impacts the student's education, it must **consider it a visual impairment**, and **determine whether the student requires special education instruction as a**

¹ This is defined as specially designed instruction to meet the student's unique needs, which involves adapting the content, methodology, or delivery of instruction in order to ensure the student's access to the general curriculum (34 CFR §§300.08 and .39).

XXX

Mr. Nicholas Shockney

September 23, 2016

Page 4

result of the visual impairment. If the student is found to require special education instruction, the student meets the criteria for identification as a student with a Visual Impairment under the IDEA.

In this case, the complainant alleges that the CCPS was provided with the student's medical diagnosis of a visual impairment and that the school staff refused to consider it (Doc. j).

Based on the Finding of Fact #3, the MSDE finds that the documentation does not support the complainant's assertion. Therefore, there is no violation with regard to this student.

Notwithstanding the violation, based on the Findings of Facts #1 and #2, the MSDE concurs with the CCPS that the IDEA evaluation procedures are not consistent with the MSDE guidance and finds that a violation occurred. The MSDE appreciates the responsiveness of the school system and concurs with the corrective action that is proposed to address this violation.

CORRECTIVE ACTIONS/TIMELINES:

System-Based

The MSDE requires the CCPS 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 CCPS 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 CCPS to provide documentation by January 1, 2017 that notice has been provided to the parents of all CCPS students, or notice is provided on the CCPS 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.

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 both the complainant and the CCPS have the right to submit additional written documentation to this office, which must be received 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.

XXX

Mr. Nicholas Shockney

September 23, 2016

Page 4

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 and conclusions contained in this letter should be addressed to this office in writing. The parties maintain the right to request mediation or to file a due process complaint, if they disagree with the identification, evaluation, placement, or provision of a Free Appropriate Public Education for the student, including issues subject to this State complaint investigation, consistent with the IDEA.

The MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

Marcella E. Franczkowski, M.S.

Assistant State Superintendent

Division of Special Education/Early Intervention Services

MEF:ac

c: Stephen Guthrie
Wayne Whalen
XXXXXXXXXX
Dori Wilson
Anita Mandis
Albert Chichester
Nancy Birenbaum