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September 13, 2016

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Ms. Bobbi Pedrick
Director of Special Education
Anne Arundel County Public Schools
2644 Riva Road
Annapolis, Maryland 21401

RE: Anne Arundel County Public Schools
Child Find Procedures
Reference: #17-010

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 special education services for the above-referenced students. This correspondence is the report of the final results of the investigation.

ALLEGATION:

On July 15, 2016, the MSDE received a complaint from Ms. XXXXXXXXXX hereafter, “the complainant. In that correspondence, the complainant alleged that the Anne Arundel County Public Schools (AACPS) does not follow proper procedures when determining whether 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 15, 2016 the complainant provided the MSDE with information regarding the AACPS students X.X. and X.X.
2. On July 26, 2016, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint.
3. On July 29, 2016, the MSDE sent correspondence to the complainant that identified the allegation to be investigated. On the same date, the MSDE notified the AACPS of the allegation and requested that the school system review the alleged violation.

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4. On September 1, 2016, Mr. Gerald Loiacono, Complaint Investigator, MSDE, contacted Ms. Allison Barmat, Program Manager of Legal Issues and Compliance, AACPS, to discuss the AACPS policies regarding identification of students with a Visual Impairment, under the IDEA. On the same day, the MSDE requested, and received, documentation from the AACPS.
5. On September 1, 2016, Mr. Loiacono requested, and received, additional documentation from the complainant and the parent of X.X.
6. On September 1, 2016, Mr. Loiacono conducted a telephone interview with the parent of X.X. to discuss the allegation.
7. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. The AACPS document entitled “Services for Students Who are Visually Impaired and Blind, undated;
 - b. The AACPS “Parent eHandbook for Special Education,” updated July 2016;
 - c. Enrollment history for student X.X., dated August 23, 2010 to May 29, 2015;
 - d. Initial Evaluation Request for Special Education for student X.X., dated June 3, 2016;
 - e. Team Consideration of External Report for student X.X., undated;
 - f. IEP team referral for student X.X., dated
 - g. “Summary of Student Performance in the School Setting for student X.X., dated June 8, 2016;
 - h. IEP Team Report for student X.X., dated June 10, 2016; and
 - i. Correspondence from the complainant alleging a violation of the IDEA, received by the MSDE on July 15, 2016.

BACKGROUND:

The complainant bases the allegation on the AACPS policies and on the procedures followed by IEP teams that convened to conduct IDEA evaluations for students X.X. and X.X. During the course of this investigation, it was discovered that the IDEA evaluation conducted for student X.X. occurred more than one year¹ prior to the date that the State complaint was filed, and as a result, this office was unable to investigate the allegation related to that student (Docs. c and i).

FINDINGS OF FACT:

1. The AACPS policy regarding identification of students with a visual impairment, which is posted on the AACPS, and available in their *Parent eHandbook for Special Education* defines the term “Visual Impairment” as “a visual impairment, which, even with correction, adversely affects a student's educational performance.

¹ Only those violations of the IDEA that are alleged to have occurred within one year of the filing of a State complaint may be addressed through the State complaint procedure (34 CFR §300.153).

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The term includes:

- "Legal blindness" - visual acuity is 20/200 or less, in the better eye, after correction, or a field restriction of less than 20°; and
 - "Partial sight" - visual acuity is 20/70 or less, in the better eye, after correction." (Docs. a and b).
2. The AACPS policy further states that, in order to be found eligible as a student with a disability under the IDEA for a visual impairment the student must meet the following criteria:
- "Documentation is present of a recent (within 1 year), comprehensive visual evaluation by a licensed optometrist or board-certified ophthalmologist;
 - This visual evaluation documents one or more of the following visual impairments:
 - corrected visual acuity of 20/70 or less in the better eye (after correction); or
 - a medically-documented progressive vision loss;
 - Documentation of a comprehensive educational evaluation by a certified teacher, based on the evaluation plan; and
 - The team has determined that the educational evaluation documents that the visual impairment interferes with the student's ability to function in an educational program using conventional instructional materials and techniques, and includes a description of any material modifications, adaptations, equipment or therapies needed (Doc.s a and b).

Evaluation of X.X.

3. The parent of X.X. requested an IDEA evaluation on June 2, 2016 on the basis of a suspected visual impairment, and provided the AACPS school staff with medical documentation that reflects that the student was diagnosed with multiple vision-based conditions, including Binocular Vision Deficiency (Doc. d).
4. On June 10, 2016, the IEP team considered the medical information provided by the parent of X.X., teacher reports, classroom observations and student educational performance. The documents reflect that, while the student has been diagnosed with multiple vision based conditions, there is no evidence that the condition required additional accommodations not provided through the student's existing 504 Plan² or specialized instruction (Docs. d-h).

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**

² 504 Plan refers to an Accommodations Plan under Section 504 of the Rehabilitation Act of 1973.

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special education³ 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 evaluation or 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 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.

Based on the Findings of Facts, #1 and #2, the MSDE finds that the AACPS policies limit the types of visual impairments that can be considered when determining whether a student meets the criteria for identification with a Visual Impairment under the IDEA. As a result the MSDE finds that a violation occurred.

Notwithstanding the violation, based on Findings of Facts #3 and #4, the MSDE finds that the IEP team for student X.X. considered medical data regarding the student's vision-based conditions and whether it was impacting the student's education when determining whether the student was suspected of being a student with a Visual Impairment under the IDEA. Therefore a violation is not identified for student X.X.

³ 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).

CORRECTIVE ACTION:

The MSDE requires the AACPS to provide documentation by January 31, 2017 that its procedures for evaluating students for a Visual Impairment under the IDEA have been revised consistent with the MSDE guidance, and that it has informed parents and staff of the change.

TECHNICAL ASSISTANCE/TIMELINE:

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 ACPS 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 fact 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. The complainant and the school system 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 due process.

Sincerely,

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

MEF:gl

c: George Arlotto Anita Mandis
 Alison Barmat Gerald Loiacono
 Dori Wilson Nancy Birenbaum