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August 23, 2016

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Ms. Nancy Fitzgerald  
Executive Director of Special Education  
and Student Services  
Howard County Public Schools  
10910 Route 108  
Ellicott City, Maryland 21042-6198

RE: XXXXX similarly-situated  
students  
Reference: #16-153

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 student. This correspondence is the report of the final results of the investigation.

**ALLEGATION:**

On June 24, 2016, the MSDE received a complaint from Ms. XXXXXXXXXXXX hereafter, “the complainant,” on behalf of her son, the above-referenced student, and similarly-situated students. In that correspondence, the complainant alleged that the Howard County Public Schools (HCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the students.

The MSDE investigated the allegation that the HCPS did not follow proper procedures when determining whether the 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 1, 2016, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On the

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

3. On August 23, 2016, Mr. Loiacono conducted a telephone interview with the complainant about the allegation.
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 December 3, 2015;
  - b. Prior Written Notice, dated December 3, 2015;
  - c. Prior Written Notice, dated May 12, 2016;
  - d. Prior Written Notice, dated June 8, 2016;
  - e. Interim Alternative Educational Setting (IAES) IEP, dated May 12, 2016; and
  - f. Correspondence from the complainant alleging a violation of the IDEA, received by the MSDE on June 24, 2016.

#### **BACKGROUND:**

The student is twelve years old and is identified as a student with Autism under the IDEA and has an IEP that requires the provision of special education services (Docs. a - c).

There is documentation that the complainant participated in the education decision-making process and was provided with written notice of the procedural safeguards during the time period addressed by this investigation (Docs. a-c).

#### **FINDING OF FACT:**

1. There is no documentation that a re-evaluation either was conducted or requested for the student during the time period identified for investigation (Docs. a-f).

#### **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**<sup>1</sup> and related services, which are provided through an **Individualized Education Program** [Emphasis added] (34 CFR §§300.08 and .101).

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<sup>1</sup> 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).

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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.

In this case, the complainant alleges that the IEP team refused to consider her request for a re-evaluation of the student to determine if he has a Visual Impairment under the IDEA. Based on Finding of Fact #1, the MSDE finds that the documentation does not support the allegation. Therefore, the MSDE does not find that a violation occurred with respect to the allegation.

#### **TIMELINE:**

Please be advised that the HCPS 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.

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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:am

c: Renee A. Foose  
Kelly Russo  
XXXXXX  
Dori Wilson  
Anita Mandis  
Gerald Loiacono