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September 16, 2016

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Ms. Heather Raybold
Supervisor of Special Education
Garrett County Public Schools
40 South Second Street
Oakland, Maryland 21550

RE: Garrett County Public Schools
Child Find Procedures
Reference: #17-012

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.

ALLEGATION:

On July 18, 2016,¹ the MSDE received a complaint from Ms. XXXXXXXXXXXX hereafter, “the complainant.” In that correspondence, the complainant alleged that the Garrett County Public Schools (GCPS) 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 26, 2016, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint.
2. 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 GCPS of the allegation and requested that the school system review the alleged violation.

¹ The letter sent to the complainant on June 29, 2016, inadvertently identified July 16, 2016 as the date the complaint was received.

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3. On August 8, 2016, Mr. Albert Chichester, Complaint Investigator, MSDE, and Ms. Anita Mandis, Complaint Investigation Section Chief, MSDE, conducted a telephone interview with Ms. Heather Raybold, Supervisor of Special Education, GCPS, to discuss the allegation.
4. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. The GCPS Special Education Handbook, dated July 2014;
 - b. The GCPS Special Education Handbook, dated July 2016; and
 - c. Correspondence from the complainant alleging a violation of the IDEA, received by the MSDE on July 18, 2016.

FINDINGS OF FACT:

1. The GCPS policy, which was formerly available on the GCPS website, and was provided by the complainant, stated that a student may be determined to be a student with a Visual Impairment, under the IDEA, if there is documentation of a recent, comprehensive visual evaluation by a qualified optometrist or ophthalmologist, verifying one of the following visual impairments: corrected visual acuity of 20/70 or less in the better eye (after correction), a medically-documented progressive vision loss, or rapid, involuntary eye movement (Doc. a).
2. The GCPS policy has been corrected and no longer limits consideration to students who have visual impairments of visual acuity of 20/70 or less in the better eye (after correction), a medically-documented progressive vision loss, or rapid, involuntary eye movement (Doc. b).

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 education²** 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**

² 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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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 Finding of Fact #1, the MSDE finds that the previous GCPS policy limited 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. Therefore, the MSDE finds that a violation occurred.

Notwithstanding that violation, based on the Finding of Fact #2, the MSDE further finds that the GCPS no longer limits the types of impairments that can be considered when determining whether a student meets the criteria for identification with a Visual Impairment under the IDEA.

CORRECTIVE ACTIONS/TIMELINE:

The MSDE requires the GCPS to provide documentation by January 1, 2017, that it has informed parents and staff in the change of procedures for evaluating students for a Visual Impairment under the IDEA.

Please be advised that the GCPS 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:ac

c: Barbara Baker
Dori Wilson
Anita Mandis
Albert Chichester
Nancy Birenbaum