



October 16, 2013

[REDACTED]
District of Columbia Public Schools
[REDACTED]

RE: State Complaint No. 013-004

LETTER OF DECISION

PROCEDURAL BACKGROUND

On [REDACTED], the State Complaint Office of the Office of the State Superintendent of Education (OSSE), Division of Specialized Education received a State Complaint from [REDACTED], hereinafter “complainant,” against the District of Columbia Public Schools (DCPS) alleging systemic violations in DCPS’ provision of special education services.

The complainant alleged that DCPS violated certain provisions of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 et seq. and regulations promulgated at 34 CFR Part 300, specifically; failure to properly define visual impairment including blindness¹.

The State Complaint Office for OSSE has completed its investigation of the State Complaint. This Letter of Decision is the report of the final results of OSSE’s investigation.

COMPLAINT ISSUES

The allegations raised in the complaint, further clarified by a review of documents and interviews or revealed in the course of the investigation, raised the following issues under the jurisdiction of the State Complaint Office:

1. Whether DCPS’ definition of visual impairment including blindness conflicts with and wrongfully restricts the definition of visual impairment including blindness in the IDEA at 34 CFR §300.8(c)(13)?

¹ The original complaint also stated that the improper definition resulted in DCPS’ failure to identify students as eligible for special education services under the category of visual impairment. This was originally accepted as a separate systemic child find issue for investigation under 34 CFR §300.111, however, once the State Complaint Office determined that the definition was appropriate, the second allegation became moot and was therefore not investigated.

INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:

1. [REDACTED], DCPS Office of Specialized Instruction

The investigation also included review of the following documents which were either submitted by the complainant, submitted by DCPS, accessible via the Special Education Data System (SEDS), or obtained by OSSE:

[REDACTED]

ISSUE ONE: DEFINITION OF VISUAL IMPAIRMENT INCLUDING BLINDNESS

Findings of Fact

1. A former DCPS vision services Program Director wrote a letter to the complainant which stated that four eligibility criteria were used to determine whether a student could be eligible for special education services under the category of visual impairment including blindness.
2. The four criteria were the same criteria contained in OSSE’s state-level March 22, 2010 Part B Initial Evaluation/Reevaluation Policy.

Discussion/Conclusion

DCPS' definition of visual impairment including blindness is in compliance with 34 CFR §300.8(c)(13).

The IDEA regulations define visual impairment including blindness as, "an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness." (34 CFR §300.8(c)(13)) The complainant alleged that DCPS' eligibility criteria for visual impairment and blindness were unlawfully restrictive because they were more restrictive than the federal law. This allegation was not supported by the investigation.

While the State Complaint Office was unable to locate any OSEP opinion or court decision which examined the sufficiency of a public agency's definition of visual impairment including blindness, OSEP's Federal Register commentary contemplates some deviation from the IDEA disability definitions at 34 CFR §300.8(c). In a discussion of adding criteria to the federal definition of mental retardation at 34 CFR §300.8(c)(6), OSEP stated, "[t]here is nothing in the Act or these regulations that would prevent a State from adding [the criterion under discussion] in a State's definition of mental retardation, *as long as the State's definition is consistent with these regulations.*" (71 Fed. Reg. 46550)(emphasis added).

DCPS' definition of visual impairment including blindness deviates from the federal definition of visual impairment including blindness but it is consistent with the federal definition. The DCPS policy is based on OSSE's March 22, 2010 Part B Initial Evaluation/Reevaluation Policy. OSSE's policy provides the federal definition for each IDEA disability category as well as criteria that help the IEP team determine whether the student meets that eligibility category. For visual impairment including blindness, the policy requires that a child's impairment must meet one or more of the minimum criteria listed below. DCPS identified these criteria to the complainant in its [REDACTED] letter.

- Central acuity with corrective lenses 20/70 in the better eye with correction, or
- Reduced visual field to 50 degrees or less in the better eye, or
- A diagnosis of cortical visual impairment, or
- A diagnosis of a degenerative condition that is likely to result in a significant loss of vision in the future.

In its response to the complaint, DCPS submitted an eligibility determination information sheet currently used by IEP teams who are determining eligibility under the category of visual impairment including blindness. The eligibility determination information sheet includes slightly modified field restriction ranges (and thereby divides students into categories of blind or partially sighted) and adds an additional, fifth criterion to the four criteria cited above:

- Any ocular pathology that is permanent and irremediable through medical or

therapeutic intervention that has adverse effect on educational performance.

This additional DCPS criterion is less restrictive than OSSE's policy, because it has the effect of broadening the kinds of visual impairments that could qualify a student for vision services. OSSE was unable to determine why the information provided by the former Program Director did not include the additional criterion. DCPS reported that their current eligibility process is that each IEP team makes the eligibility determination using the five criteria identified in the IEP team eligibility determination information sheet to support their decision making, and that there is no central office or Program Director level review of IEP team eligibility determinations.

While DCPS provided the less restrictive set of eligibility criteria described above during the investigation, OSSE analyzed the more restrictive criteria included in the State policy and cited by the former Program Director to determine whether these criteria are consistent with the federal definition of visual impairment including blindness at 34 CFR §300.8(c)(13).

OSSE examined the state-level policies for the category of visual impairment including blindness from 20 percent, or ten other states. All of the states reviewed published guidelines that IEP teams are required to follow when making an eligibility determination under the category of visual impairment including blindness. Each state reviewed included state-level eligibility criteria in addition to the federal definition of visual impairment including blindness. The additional, or state-level, eligibility criteria fall into two broad categories: assessment based and quantifiable criteria.

Assessment Based Criteria

States that use assessment based criteria require IEP teams to show proof of a student's eligibility for services under the category of visual impairment including blindness by considering a series of professional opinions. For example, the State of Texas Education of the Blind and Visually Impaired Students Advisory Committee published state-wide eligibility guidelines and standards² which do not identify particular acuity and visual field targets. Instead, the guidance provides a list of reports that must be considered in an eligibility determination. "[The] committee must consider: 1) a medical report by a licensed ophthalmologist or optometrist 2) a functional vision evaluation conducted by a certified teacher of students with visual impairments (TVI) and/or a certified orientation and mobility specialist (COMS) 3) a learning media assessment that must be conducted by a teacher of students with visual impairments." Like Texas, the State of Iowa Department of Education has published eligibility guidelines that require assessment by a teacher of blind and visually impaired students and an Orientation and Mobility instructor.³

² See: <http://www.tsbvi.edu/attachments/EducatingStudentswithVIGuidelinesStandards.pdf>

³ See: http://educateiowa.gov/index.php?option=com_content&task=view&id=1602&Itemid=2381

Quantifiable Criteria

Several states publish eligibility guidelines that are structured like the guidelines published by OSSE in that they include specific numerical or diagnostic criteria that must be present in order to find eligibility. The table below compares OSSE’s published criteria to those of eight other states.

A COMPARISON OF STATE ELIGIBILITY CRITERIA: VISUAL IMPAIRMENT/BLINDNESS					
STATE	ACUITY	VISUAL FIELD	CVI⁴	DEGENERATIVE CONDITION	OTHER
OSSE/DC: at least one of the following	20/70 or less best eye, best correction	50 degrees or less in better eye	Diagnosis of CVI	Yes	
Colorado ⁵ :	20/70 or less best eye, best correction	20 degrees or less in better eye			A physical condition of visual system which cannot be medically corrected, and as such affects visual functioning.
Georgia ⁶ :	20/70 or less best eye, best correction		CVI diagnosed by neurologist or ophthalmologist	Yes	
Oregon ⁷ : One or more of the following	20/70 or less best eye, best correction	Restricted to 20 degrees or less in better eye		Yes	

⁴ CVI stands for Cortical Visual Impairment, which is a neurologically based visual impairment. It is considered separately from other conditions of the eye because many times a child with CVI will present as having normally functioning eyes. The visual problem arises in the visual pathways in the brain or the occipital lobe. For more information see: <http://www.aph.org/cvi/define.html>

⁵See: http://www.cde.state.co.us/sites/default/files/documents/cdesped/download/pdf/vi_eligibility_visualimpairmentincludingblindness.pdf

⁶See: http://archives.gadoe.org/DMGetDocument.aspx/160-4-7-.05_VI_Eligibility_3-31-10.pdf?p=6CC6799F8C1371F6E31C808BFC500F0674BF020E8F819B1CBEDD61ED12E0686D&Type=D

⁷ See: <http://www.ode.state.or.us/search/page/?id=1377>

South Carolina ⁸ : One of the following	20/70 or less best eye, best correction	40 degrees or less in better eye	Evidence of CVI	Yes	Acuity not able to be determined, but functional vision exam supports finding vision loss
South Dakota ⁹ : one or more deficiencies as follows	20/70 or less best eye, best correction	Restricted visual field		Yes	Limited ability to move about safely in the environment because of visual disability.
Tennessee ¹⁰ : meets federal definition plus one of the following	20/50 or less in better eye or both eyes, best correction	60 degrees or less		Yes	Other visual impairment, not perceptual in nature, resulting from a medically documented condition.
Virginia ¹¹ : demonstrates one of the following	20/70 or less best eye, best correction	70 degrees or less in better eye	Student has CVI	Yes	
Wisconsin ¹² : at least one of the following	20/70 or less best eye, best correction	50 degrees or less in better eye	CVI	Yes	

OSSE's eligibility policy for visual impairment including blindness is very similar to policies used

⁸See: http://www.ed.sc.gov/agency/programs-services/173/documents/SEED_Final.pdf

⁹See: <http://doe.sd.gov/oess/documents/Eligibilt.pdf>

¹⁰See: <http://www.tsbtigers.org/TSB/Vision/profres/SPED%20Manual%202010%209.1.10.PDF>

¹¹See: http://www.doe.virginia.gov/special_ed/disabilities/sensory_disabilities/visually_impaired_blind/visually_impaired_guidelines.pdf

¹² See: <http://dpi.wi.gov/files/sped/pdf/viguide.pdf>

by other states. With the exception of Tennessee, all states in the quantifiable criteria category used the same acuity measure to qualify for visual impairment. OSSE's field restriction measure of 50 degrees was in the middle of the six (of eight) other states that had a specific field restriction criterion. Like OSSE, all but one of the other eight states allow for eligibility through proof of a degenerative eye condition. Finally, like four of the eight states surveyed, OSSE permits eligibility through a diagnosis of cortical visual impairment.

We found no evidence that OSEP or any court has found any of the definitional criteria described here to be inconsistent with the federal definition of visual impairment including blindness. DCPS' five eligibility criteria are based upon OSSE's policy, but are ultimately more inclusive than some of the other state policies detailed here because DCPS allows for eligibility via the standard acuity and field restriction criteria, but also allows for eligibility through a diagnosis of cortical visual impairment, degenerative condition, or irremediable condition.

Therefore, DCPS' definition of visual impairment including blindness is in compliance with 34 CFR §300.8(c)(13).

CORRECTIVE ACTION

There are no findings of noncompliance associated with this Letter of Decision; therefore, there are no corrective actions for the LEA to complete.

If you have any questions regarding this decision, please contact Jennifer Masoodi, Director, Monitoring and Compliance, at jennifer.masoodi@dc.gov or 202-741-0479.

Sincerely,

Amy Maisterra, Ed.D., MSW
Assistant Superintendent for Specialized Education

cc: [REDACTED], Complainant
[REDACTED], DCPS [REDACTED]