



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND
REHABILITATIVE SERVICES

November 12, 2014

Michelle Kotler
Law Offices of Michelle Kotler, P.C.
5257 Buckeystown Pike #269
Frederick, Maryland 21704

Dear Ms. Kotler:

This is in response to your letter to the Office of Special Education Programs (OSEP) regarding the criteria used by some States to identify children with “visual impairments or blindness,” as that term is defined under Part B of the Individuals with Disabilities Education Act (IDEA). In your letter, you provide, as an example, the criteria used by the District of Columbia Public Schools (DCPS) to determine eligibility for special education and related services under Part B of the IDEA based on visual impairment or blindness.¹ You indicate that the criteria are inconsistent with Federal regulations because they exclude children whose vision problems affect their ability to read and write. Furthermore, you indicate that an example of a vision condition that severely impairs learning is “convergence insufficiency” and that some States’ definitions of “visual impairment” exclude children with such a condition.

Under Part B of the IDEA a child with a disability means a child evaluated in accordance with 34 CFR §§300.304-300.311 as having a disability, and who, by reason thereof, needs special education and related services. 34 CFR §300.8(a)(1). Further, under 34 CFR §300.8(c)(13), “visual impairment including blindness” means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness. OSEP understands that convergence insufficiency results when a person’s eyes do not properly turn inward to focus and provide binocular vision and a single image, which could affect a child’s ability to read, and therefore, the child’s educational performance.

While States may establish standards for eligibility for special education and related services, and are not required to use the precise definition of disability terms in the IDEA, these State-established standards must not narrow the definition in the IDEA. It is important to note that

¹ Your letter included a copy of the Office of the State Superintendent of Education’s (OSSE) Letter of Decision for State Complaint No. 013-004 dated October 16, 2013, in which OSSE identified the five eligibility criteria used by DCPS under the category of visual impairment including blindness:

1. Central acuity with corrective lenses 20/70 in the better eye with correction, or
2. Reduced visual field to 50 degrees or less in the better eye, or
3. A diagnosis of cortical visual impairment, or
4. A diagnosis of a degenerative condition that is likely to result in a significant loss of vision in the future, or
5. Any ocular pathology that is permanent and irremediable through medical or therapeutic intervention that has adverse effect on educational performance.

States define or adopt common definitions of certain ambiguous modifiers to guide evaluators in making individualized determinations of eligibility. For example, where the definition of “intellectual disability”² refers to “*significantly* subaverage general intellectual functioning,” 34 CFR §300.8(c)(6), and, similarly, where the definition of “orthopedic impairment” refers to “*severe* orthopedic impairment that adversely affects a child’s educational performance,” States are given discretion to determine the precise level of impairment that qualifies as *significant*, and *severe*, respectively, in order for evaluators to implement those definitions. In contrast, the definition of “visual impairment including blindness,” does not contain a vague modifier; rather, *any* impairment in vision, regardless of severity, is covered, provided that such impairment, even with correction, adversely affects a child’s educational performance.

Accordingly, States may not use criteria or other definitions for “visual impairment including blindness” that result in the exclusion of children who otherwise meet the definition in 34 CFR §300.8(c)(13). State eligibility guidelines and definitions for visual impairment and blindness may not exclude a child with convergence insufficiency or other visual impairment from meeting the definition in the IDEA for visual impairment and blindness if that condition adversely affects that child’s educational performance.

The evaluation of vision status and the need for special education and related services should be thorough and rigorous, include a data-based media assessment, be based on a range of learning modalities, including auditory, tactile, and visual, and include a functional visual assessment. An assessment of a child’s vision status generally would include the nature and extent of the child’s visual impairment, and its affect, for example, on the child’s ability to learn to read, write, do mathematical calculations, and use computers and other assistive technology, as well as the child’s ability to be involved in and make progress in the general curriculum offered to nondisabled students. Such an evaluation generally would be closely linked to the assessment of the child’s present and future reading and writing objectives, needs, and appropriate reading and writing media. The information obtained through the evaluation generally should be used by the IEP Team in determining whether it would be appropriate to provide a blind or visually impaired child with special education instruction or related services as required by the IDEA. In addition, because the evaluation must assess a child’s future needs, a child’s current vision status should not necessarily determine whether it would be inappropriate for that child to receive special education and related services while in school. Please see OSEP’s Dear Colleague Letter on Braille, June 19, 2013, <http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/brailledcl-6-19-13.pdf> (copy attached).

With respect to the definition used by DCPS, as the State educational agency for the District of Columbia, OSSE is responsible for establishing and implementing procedures for ensuring that all eligible children with disabilities are identified, located and evaluated, and that a free appropriate public education is made available to all such children. OSSE is also responsible for ensuring that Part B funds are not used to serve children who do not meet the Part B definition of “child with a disability.” It is the role of OSSE, rather than this office, to establish State standards for determining eligibility (so long as they are consistent with Part B requirements), and to determine whether DCPS’ eligibility guidelines are consistent with State standards, and the requirements of Part B of the IDEA. OSEP will work with OSSE to address this issue.

² Rosa’s Law (P.L. 111-256) replaced references to “mental retardation” or “mentally retarded” with “intellectual disability” in all Federal health, education, and labor policy.

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

Thank you for bringing this matter to our attention. If you have questions, please do not hesitate to contact Jennifer Denny at 202-245-6331 or by email at Jennifer.Denny@ed.gov.

Sincerely,

/s/ Melody Musgrove

Melody Musgrove, Ed.D.
Director
Office of Special Education Programs

Attachment

cc: State Director of Special Education

