

Executive Summary Attachment #2.1

Title: **REQUIRED CHANGES Part II: *Policies Governing Services for Children with Disabilities (Policies)***

Reference: Memorandum | Eligibility Determinations for Children Suspected of Having a Visual Impairment Including Blindness under the Individuals with Disabilities Education Act | May 22, 2017

Recommendation: *Policies*

- (14) 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. ~~A visual impairment is the result of a diagnosed ocular or cortical pathology.~~

(Authority: 20 U.S.C. 1401(3); 1401(30); 34 CFR 300.8; 115C-106.3(1)(2))

NC 1500-2.5 Consent

Consent means that--

- (a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;
- (b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and
- (c)
 - (1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.
 - (2) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).
 - (3) If the parent revokes consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.

(Authority: 20 U.S.C. 1414(a)(1)(D); 34 CFR 300.9)

~~NC 1500-2.6 Core Academic Subjects~~

~~Core academic subjects means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.~~

(Authority: 20 U.S.C. 1401(4); 34 CFR 300.10)

NC 1500-2.7 Day; Business Day; School Day

- (a) Day means calendar day unless otherwise indicated as a business day or school day.
- (b) Business day means Monday through Friday, except for Federal and State holidays.
- (c)
 - (1) School day means any day, including a partial day, that children are in attendance at school for instructional purposes.
 - (2) School day has the same meaning for all children in school, including children with and without disabilities.

(Authority: 20 U.S.C. 1221e-3; 34 CFR 300-11)

NC 1500-2.x Dyslexia

Dyslexia is a specific learning disability that is neurobiological in origin. It is characterized by difficulties with accurate and/or fluent word recognition and by poor spelling and decoding abilities. These difficulties typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction. Secondary consequences may include problems in reading comprehension and reduced reading experience that can impede growth of vocabulary and background knowledge.

(Authority: HB 149)

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- (I) Observation across settings to assess academic and functional skills;
 - (J) Educational evaluation;
 - (K) Psychological evaluation for traumatic brain injury; and
 - (L) Motor evaluation.
- (ii) To be determined eligible in the disability category of traumatic brain injury, a written verification by a licensed physician or a licensed psychologist, appropriately practicing in the specialty of neuropsychology, that the child has sustained an injury from which brain injury can be inferred must be obtained. No time limits exist for written verification.
 - (iii) Psychological evaluation for traumatic brain injury must be conducted by school psychologists licensed by the State Department of Public Instruction, or by psychologists who are appropriately practicing in the specialty of neuropsychology and are licensed by the North Carolina State Board of Examiners of Practicing Psychologists. All psychological evaluations for Traumatic Brain Injury must be current within one year. All school psychologists providing assessment of children with Traumatic Brain Injury must meet the guidelines of the Exceptional Children Division for training in the assessment of Traumatic Brain Injury and be listed on the Exceptional Children Division's registry of approved providers (hereafter referred to as the registry.)
 - (iv) The disability must:
 - (A) Have an adverse effect on educational performance, and
 - (B) Require specially designed instruction.
- (14) Visual Impairment, including blindness.
- (i) Required screenings and evaluations:
 - (A) Hearing screening;
 - (B) Summary of conference(s) with parents or documentation of attempts to conference with parents;
 - (C) Social/developmental history;
 - (D) Educational evaluation;
 - (E) Ophthalmological or optometric evaluation;
 - (F) For preschool children:
 - a. Observation across settings to include:
 1. Observation of physical, behavioral and environmental characteristics;
 2. Shutting or covering one eye, tilting head or thrusting head forward, squinting eyelids together;
 3. Difficulty with work requiring vision;
 4. Avoidance of near work task or irritation when required to do near work;
 5. Inability to see distant objects;
 6. Difficulty with navigation; and
 7. Eye appearance (e.g., crossed eyes, nystagmus).
 - (G) For school age children:
 - a. Observation across settings to assess academic, and functional skills;
 - b. Functional vision assessment; and
 - c. Braille skills inventory and/or media assessment.
 - ~~(ii) To be determined eligible in the disability category of visual impairment, including blindness, a child must have:~~
 - ~~(A) A visual acuity between 20/70 and 20/200 in the better eye after correction to be considered visually impaired.~~
 - ~~(B) A visual acuity of 20/200 or less in the better eye after correction or a peripheral field so contracted that the widest diameter subtends an arc no greater than 20 degrees to be considered legally blind.~~
 - (iii) The disability must:
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Recommendation: *Policies*



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

May 22, 2017

Contact Person Name: Lisa Pagano Telephone: (202) 245-7413

OSEP 17-05

MEMORANDUM

TO: State Directors of Special Education, Preschool/619 State Coordinators

FROM: Ruth E. Ryder
Acting Director
Office of Special Education Programs

SUBJECT: Eligibility Determinations for Children Suspected of Having a Visual Impairment Including Blindness under the Individuals with Disabilities Education Act

On November 12, 2014, the Office of Special Education Programs (OSEP) issued a response to an inquiry for policy clarification addressing whether a State educational agency (SEA) and/or local educational agency (LEA) is permitted to establish procedures that further define the disability category, “visual impairment including blindness,” under the Individuals with Disabilities Education Act (IDEA).¹ Since that time, OSEP has received a request for written guidance to assist SEAs in supporting their LEAs in reaching appropriate eligibility determinations for children with this disability. The purpose of this memorandum is to ensure broad dissemination of the key points made in our November 12, 2014 letter, provide the additional guidance requested on this important issue, and share information about outside resources that may be helpful as you examine your State’s procedures related to the identification and evaluation of children suspected of having a visual impairment including blindness.

Applicable IDEA Definitions

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),

¹ See OSEP *Letter to Kotler* available at: <https://www2.ed.gov/policy/speeed/guid/idea/memosdc/trs/acc-13-020197r-md-kotlereligibilitycriteria.pdf>.

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“visual impairment including blindness” means an impairment in vision that, *even with correction*, adversely affects a child’s educational performance. (Emphasis added) The term includes both partial sight and blindness.

State and Local Eligibility Criteria

While States are permitted to establish standards for eligibility for special education and related services, and are not required to use the precise definition of a disability term in the IDEA, these State-established standards must not narrow the definitions in the IDEA. We recognize that States often adopt common definitions of certain modifiers to guide evaluators in making individualized eligibility determinations. For example, as OSEP noted in our November 12, 2014 letter, “intellectual disability” refers to “*significantly* subaverage general intellectual functioning,” (34 CFR §300.8(c)(6)), and similarly, the definition of “orthopedic impairment” refers to “a *severe* orthopedic impairment that adversely affects a child’s educational performance” (34 CFR §300.8(c)(8)). In these cases, because the IDEA does not specifically address the meaning of these modifiers, the IDEA gives States discretion to determine the precise level of impairment that qualifies as “*significantly*,” and “*severe*,” respectively, in order for evaluators and eligibility teams to implement these definitions.

In contrast, in the definition of “visual impairment including blindness,” the regulations do not contain a modifier; therefore, *any* impairment in vision, regardless of significance or severity, must be included in a State’s definition, provided that such impairment, even with correction, adversely affects a child’s educational performance. 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). For example, State eligibility guidelines and definitions for “visual impairment including blindness” may not exclude a child with convergence insufficiency or other visual impairment from meeting the IDEA’s definition of “visual impairment including blindness” if that condition, even with correction, adversely affects that child’s educational performance (e.g., the child’s ability to read and write).

It has come to our attention that some States direct their LEAs to implement a two-step process when addressing whether a child suspected of having a visual impairment may be eligible for special education and related services under the IDEA. During the first step, the eligibility team is required to reach a decision as to whether the child has one or more of the conditions that the State has identified and believes could affect a child’s vision functioning. Examples of such conditions might include: the child has a reduced visual field to 50 degrees or less in the better eye; the child has been diagnosed with cortical visual impairment; or the child has a diagnosis of a degenerative condition that is likely to result in a significant loss of vision in the future. During the second step, the eligibility team determines the extent that it should proceed further and examine whether the condition adversely affects the child’s educational performance. However, if the eligibility team were to conclude the child’s vision difficulties do not fall within one of the

State's listed criteria or conditions, the eligibility team would not consider whether the child's visual functioning adversely affects his or her educational performance. Such a practice is inconsistent with the IDEA. While it is permissible for a State to provide *examples* of the types of conditions that would meet the State's criteria for "visual impairment including blindness," the SEA or LEA may not preclude eligibility teams from considering whether *other* vision conditions, even with correction, adversely affect the child's educational performance such that the child requires special education and related services under the IDEA.

For more information about various types of visual impairments and the ways in which those impairments can affect a child's ability to learn, visit <http://www.parentcenterhub.org/repository/visualimpairment/>.

Evaluation to Determine Whether the Child's Visual Impairment Adversely Affects Educational Performance

Prior to the eligibility determination, each public agency must conduct a full and individual evaluation, in accordance with 34 CFR §§300.304-300.306, before the initial provision of special education and related services to a child with a disability. 34 CFR §300.301(a). The purpose of the evaluation is to determine whether the child qualifies as a child with a disability and the nature and extent of the educational needs of the child. Under 34 CFR §300.304(b)(1), in conducting the evaluation, the public agency must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child that may assist in determining whether the child is a child with a disability and the educational needs of the child. That information could include information from a physician, if determined appropriate, to assess the effect of the child's visual impairment on the child's eligibility and educational needs. However, under 34 CFR §300.304(b)(2), no single measure or assessment may be used as the sole criterion for determining whether the child is a child with a disability and for determining an appropriate educational program for the child.

Under 34 CFR §300.306(c)(1)(i), in interpreting evaluation data for the purpose of determining whether the child is a child with a disability under Part B of the IDEA and the educational needs of the child, the group of qualified professionals and the parent must draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior. Under 34 CFR §300.306(c)(1)(ii), the public agency must ensure that information obtained from all of these sources is documented and carefully considered. There is nothing in the IDEA or the Part B regulations that would prevent a public agency from obtaining a medical diagnosis prior to determining whether the child has a

particular disability, and the educational needs of the child.² Also, there is nothing in the IDEA or the Part B regulations that would prohibit a State from requiring that a medical diagnosis be obtained for purposes of determining whether a child has a particular disability, provided the medical diagnosis is obtained at public expense and at no cost to the parents, and is not used as the sole criterion for determining an appropriate educational program for the child. Further, if a State requires a medical diagnosis consistent with the above criteria, such a requirement exceeds the requirements of Part B of the IDEA. Under 34 CFR §300.199(a)(2), the State would be required to identify in writing to the LEAs located in the State, and to the Secretary, that such rule, regulation, or policy is a State-imposed requirement that is not required by Part B of the IDEA and Federal regulations.

When determining a child's vision status, the LEA's evaluation should be thorough and rigorous. Such evaluations should 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. In previously-issued guidance, OSEP has noted that an assessment of a child's vision status generally would include the nature and extent of the child's visual impairment and its effect 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 eligibility team in determining whether it would be appropriate to provide a blind or visually impaired child with special education 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, available at: <http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/brailledcl-6-19-13.pdf>.

You may wish to consult the following outside resources that address assessments for children who have, or are suspected of having a "visual impairment including blindness."³

- American Foundation for the Blind. Assessments for students who are blind or visually impaired. Retrieved from <http://www.familyconnect.org/info/education/assessments/13>
- American Printing House for the Blind, Inc. Accessible tests resource center. Retrieved from <http://www.aph.org/accessible-tests/>

² In the case of a suspected "visual impairment including blindness," a diagnosis may be made by a medical professional such as the child's pediatrician, ophthalmologist, or optometrist.

³ These organizations are examples of organizations that may be helpful on these matters. We cannot vouch for the quality or completeness of their assistance. They are provided merely as examples, and there may be other organizations that you may wish to consult.

- Perkins eLearning Center. Assessment of students who are blind or visually impaired. Retrieved from <http://www.perkinselearning.org/scout/assessment-students-who-are-blind-or-visually-impaired>

Based on the guidance set forth in this memorandum and OSEP's *Letter to Kotler*, a State may need to review its criteria and revise those criteria, as appropriate, and make sure that its LEAs are informed of the changes. As an example of how a State could revise its criteria, a State could comply with the IDEA requirements by adding a general criterion stating that the definition of "visual impairment including blindness" includes, in addition to other specific State-established criteria, any other impairment in vision that, even with correction, adversely affects a child's educational performance.

OSEP will be following up with States through our various monitoring activities. If you have questions or would like to access technical assistance, please contact your OSEP State Lead. We appreciate your continued efforts to ensure that children suspected of having visual impairments including blindness are provided with an appropriate evaluation and if found eligible under IDEA, the services necessary to meet their special education needs.

cc: Parent Training and Information Centers
OSEP-Funded Technical Assistance Centers