

IDEA Eligibility for Vision Impairment

Wyoming Department of Education

WAVES Conference

December 10, 2020

Current Wyoming Vision Impairment Eligibility

Documentation of loss of vision, which adversely affects the child's educational performance and requires the use of specialized texts, techniques, materials, or assistive technology devices.

AND at least one of the following:

- Acuity of 20/50 or less in the better eye with best possible correction
- Field of 20 or less
- Progressive loss of vision, which may, in the future affect the child's ability to learn
- Visual acuity which cannot be measured but the child has a functional loss of vision as determined by a FVE

Letter to Kotler

In November of 2014, OSEP formally responds to a query from Michelle Kotler who is a lawyer from Maryland.

These OSEP letters are not legally binding but are seen as guidance, as they are the interpretation of IDEA by the USDOE.

Her query was regarding how some states determine eligibility for visual impairment. She indicated that some states have limitations in their eligibility for VI that exclude children that have visual conditions that impact their ability to read and write. She specifically notes that convergence insufficiency is one of these conditions.

Letter to Kotler (cont.)

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.

Letter to Kotler (cont.)

- OSEP notes that states can establish standards for eligibility, but that these standards cannot narrow the definitions in the IDEA.
- They note that the IDEA does contain “ambiguous modifiers” which give states the ability to establish specificity in order to implement those definitions. Examples are the word severe in the definition of orthopedic impairment and significant in the definition of intellectual disability.
- “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.”
- State eligibility guidelines and definitions for visual impairment and blindness may not exclude a child with convergence insufficiency or other visual conditions from meeting the definition in the IDEA for visual impairment and blindness if that condition adversely affects that child’s educational performance.

Letter to Kotler (cont.)

Guidance is provided about comprehensive evaluations for vision impairment:

- Data based assessment of learning media
- Functional vision assessment
- Nature, extent and impact of visual impairment (reading, writing, math, computer use, use of other AT, access and progress in the general ed curriculum).

OSEP Memo 17-05

- Reiterated the information in Letter to Kotler.
- It goes on to say that states that implement a two-step process which requires that a vision condition is identified and then how much that condition impacts educational performance. They note: “Such a practice is inconsistent with the IDEA.”

OSEP Memo 17-05

Prior to eligibility determination an individual evaluation must take place, which

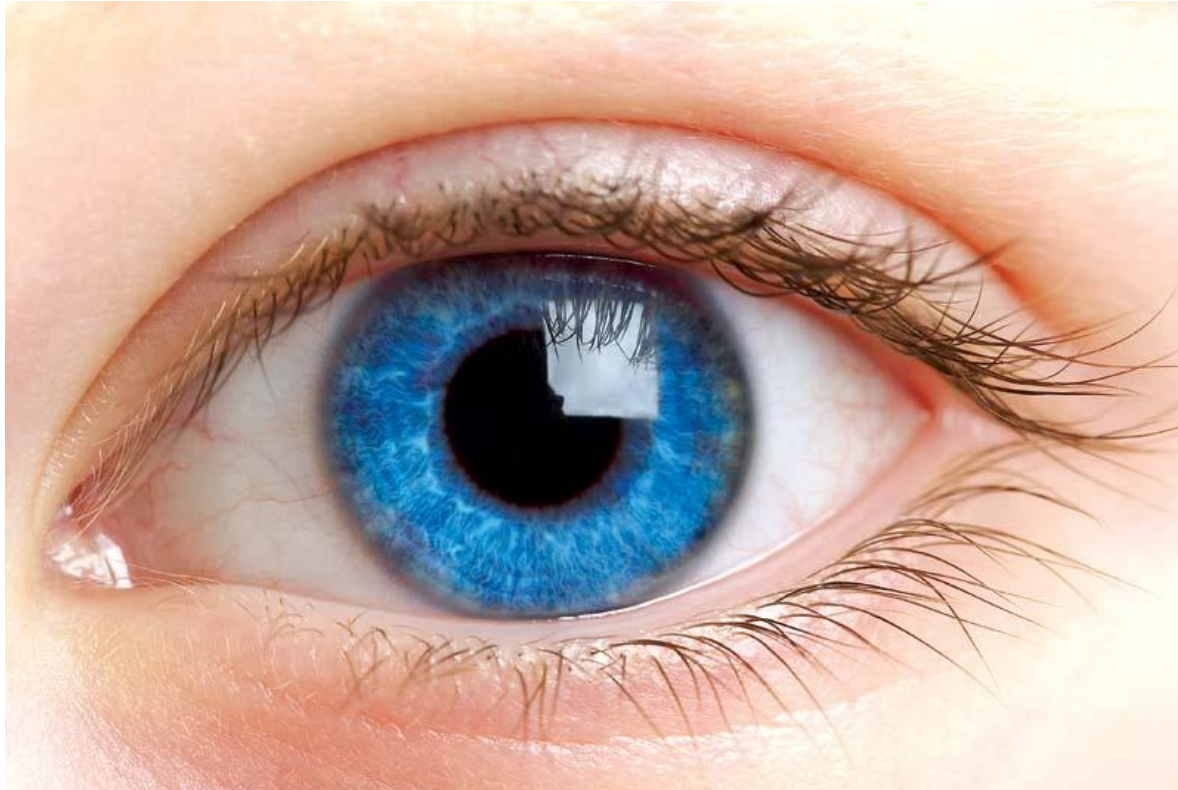
- determines the existence of a disability and the nature and extent of the student's educational needs
- may include information from a physician, however no single measure can be used to determine if the child is a child with a disability or what the appropriate educational programming for that child may be

So evaluation information should be considered **not to determine whether the child has a condition that makes the eligible**, but to determine if they have a visual condition and if that vision condition adversely affects the child's educational performance.

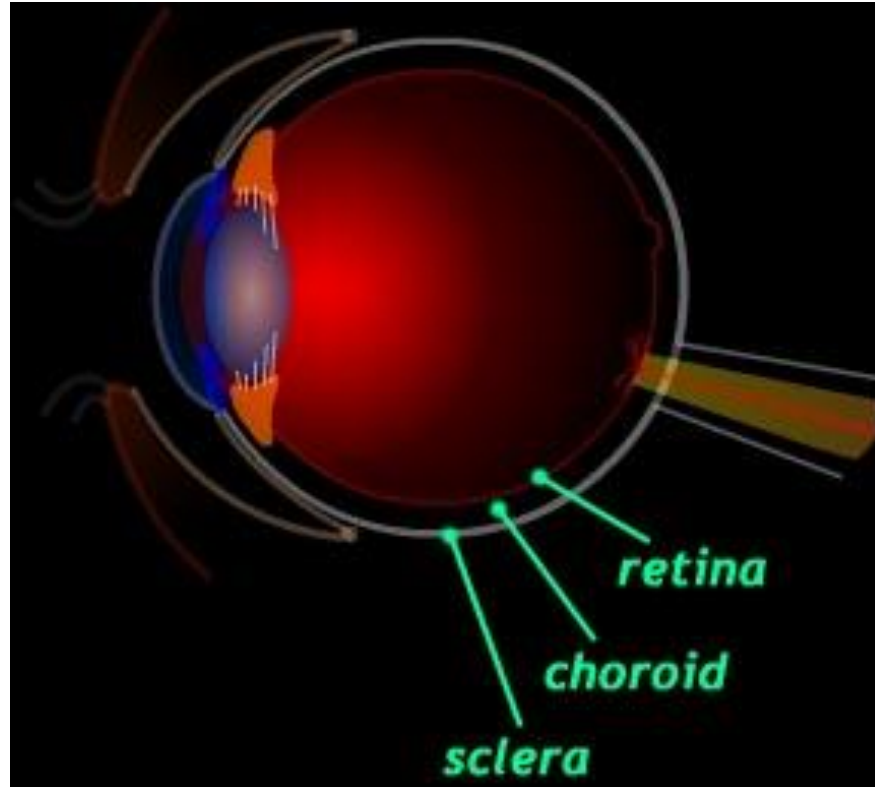
What does this mean for us?

- Visual impairment must be considered outside the parameters we have applied in the past.
- We need to look at all vision conditions and whether they adversely affect the educational performance of the individual child.
- However, the two prong eligibility requirement for IDEA still apply.
 - Having a disabling condition
 - Needing specialized instruction

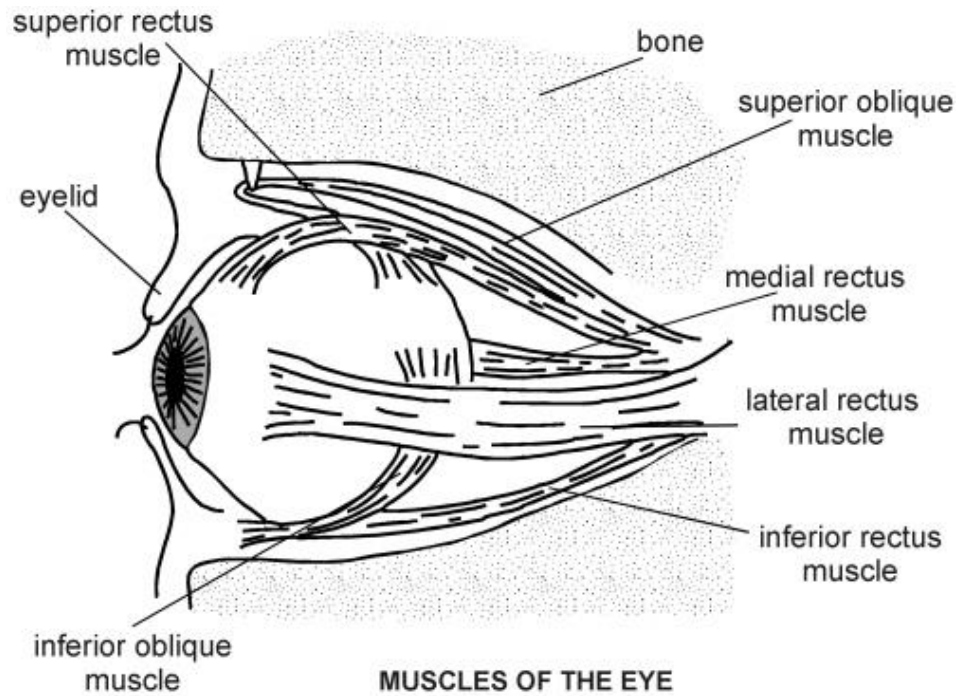
Visual System



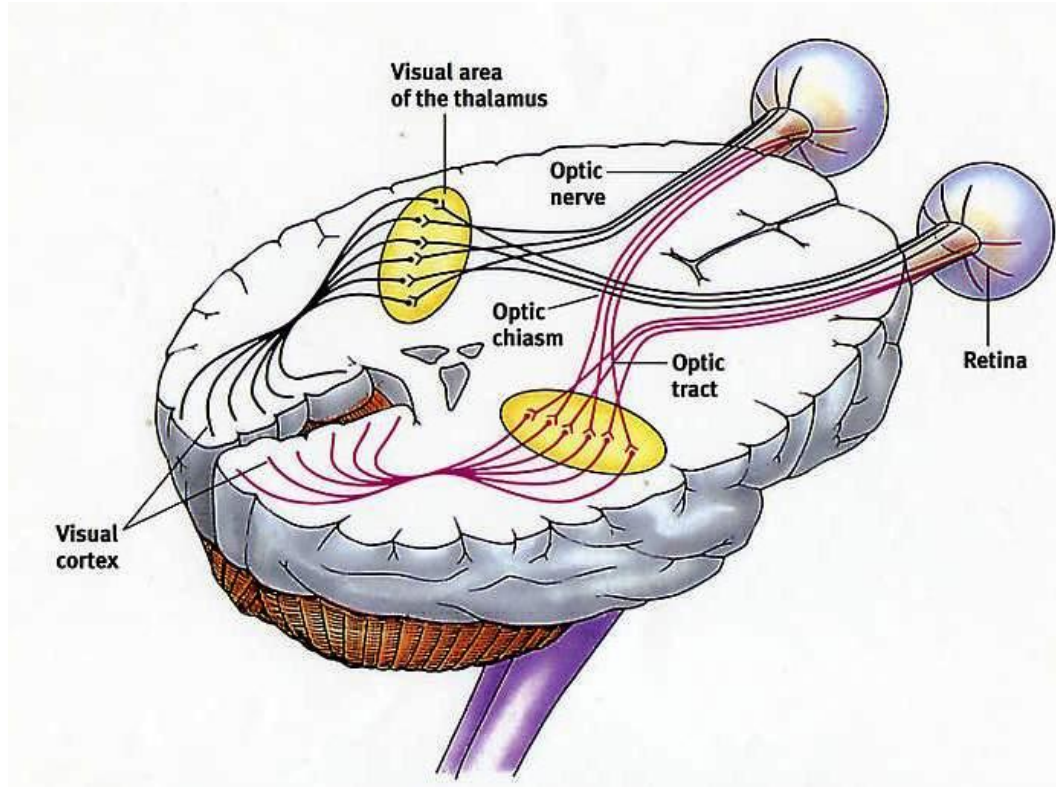
Visual System



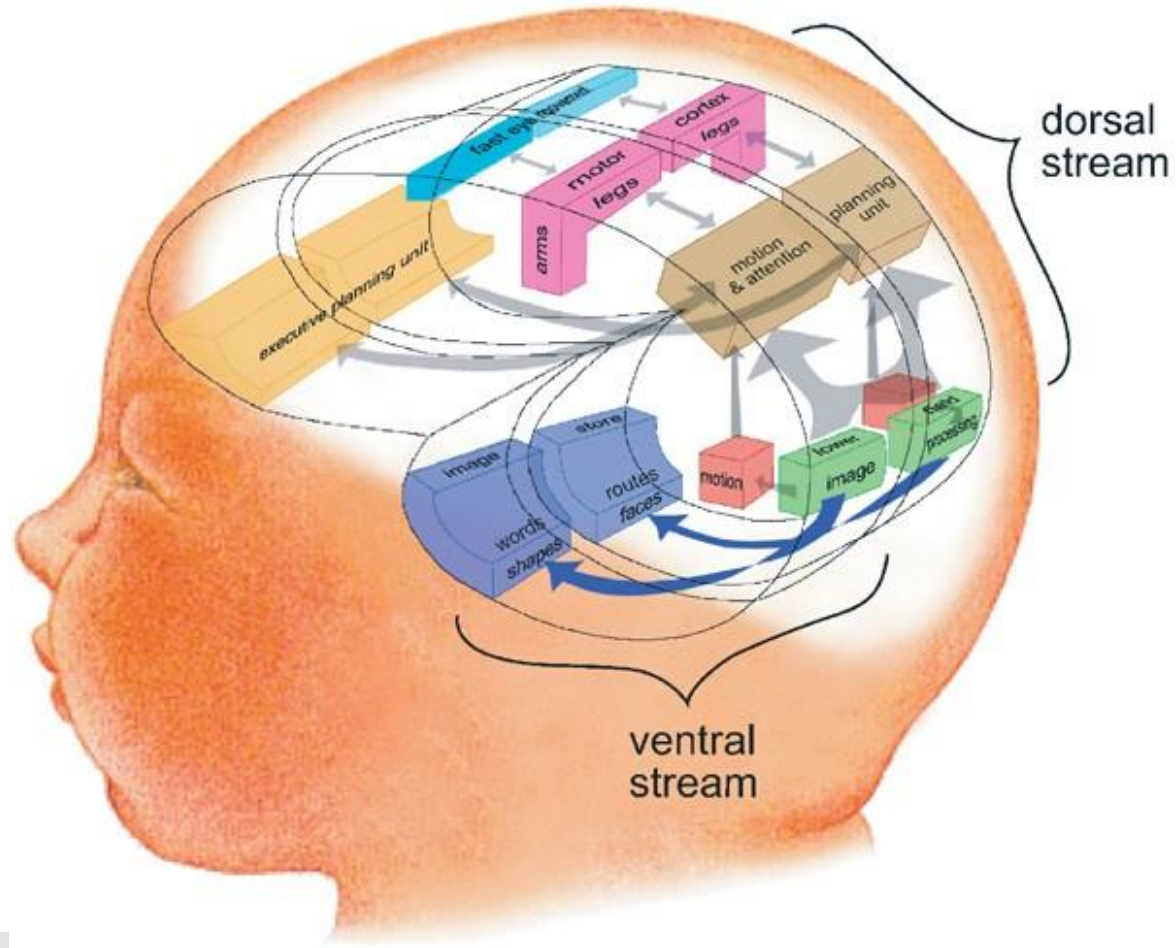
Visual System



Visual System



Visual System



Visual System



Scope of Visual Impairment



Acuity

- Nearsightedness
- Farsightedness
- Astigmatism
- Contrast Sensitivity

Field

- Peripheral
- Central
- Heminopsia
- Lower Field Loss
- Scotomas

Ocular Motor

- Eye alignment
- Tracking
- Movement disorders
- Accommodation

Cerebral Visual Impairment

- Ventral Stream Damage (What)
 - Faces/Facial Expressions
 - Locations
 - Symbols
- Dorsal Stream Damage (Where)
 - Limit in the amount of objects they can see
 - Visual guidance of reach or movement
 - Visual attention

Degenerative Condition

IDEA calls out degenerative conditions

Proactively address educational needs which will arise from a future loss of vision

FAPE

Comprehensive Evaluation

Review and collect data to determine eligibility and educational needs.

IEP Needs

Based on the comprehensive evaluation, what are the educational needs of the student in all areas related to the IDEA disability?

IEP Goals

Does the IEP contain specific, measurable annual goals that address all of the student's educational need? They should be ambitious yet reasonable.

Services

Provide IEP services designed to enable the student to attain annual IEP goals and be involved in the general curriculum.

Educational Benefit

IEP services must be reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances, or FAPE.

Comprehensive Evaluation

- Functional Vision Evaluation
- Learning Media Assessment
- Orientation and Mobility Assessment
- Expanded Core Curriculum for VI
- Optometric or Ophthalmological Information
- Visual Perception
- Ocular Motor

Needs

- Because vision conditions can impact all incidental learning, we need to be sure to look at not just academic needs but educational needs.
- Ensure students have the skills to have access to educational materials and environmental information.
- Students need an understanding of their vision condition and the accommodations they need for success.

Services

- Not all students who have a vision condition will need specialized instruction.
- Because of the broad range of vision conditions students can have a variety of service providers maybe involved in addressing goals (TSVI, COMS, OT, counselors, ATP, etc.)

Impacts of Vision Eligibility Changes

- Students who have struggled with vision conditions which were not considered a visual impairment can now receive specialized instruction.
- We may see more parental request for vision therapy and in some cases our teams may determine it is needed for a student to benefit from their specialized instruction.
- Need for increased TSVI skill in assessment.
- Need for increased collaboration between optometrist, OT, TSVI, COMS in evaluation and service provision.

Questions?

leslie.vanorman@wyo.gov



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



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/speced/guid/idea/memosdcltrs/acc-13-020197r-md-kotlereligibilitycriteria.pdf>.

“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