



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

OCT - 2 2003

Daniel W. Morse, Esq.
Disability Law Center
205 North 400 West
Salt Lake City, Utah 84103

Dear Mr. Morse:

This is in response to your letter requesting clarification from the Office of Special Education Programs (OSEP). You ask the following questions:

- 1) Does Utah [State Board of Education Special Education] Rule III.I.10 (2001) violate Part B of the IDEA [Individuals With Disabilities Education Act] by allowing LEAs [local education agencies] to write services required under IDEA on a Section 504 plan instead of an IEP [individualized education program].
- 2) More generally, can LEA compliance with Section 504 substitute for compliance with Part B of the IDEA?

You ask these questions in the context of whether accommodations for a student with disabilities can be listed solely on a Section 504 plan and not on the child's IEP.

The Part B regulations implementing the IDEA require that a State have on file with the Secretary policies and procedures approved by the Secretary that demonstrate that the State has in effect policies and procedures to ensure that it meets the conditions in §§300.121-156 of the Part B regulations (§300.110(a)). Given that Rule III.I.10 of Utah's State Board of Education Rules of June 2000 is a change to the policies and procedures Utah currently has on file with the Secretary, the Monitoring and State Improvement Planning Division (MSIP) of OSEP is currently reviewing the change in Utah's rule for consistency with Part B.

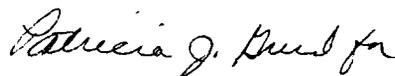
In response to your questions, it is important to contrast the requirements of Section 504 and the IDEA that apply to elementary and secondary students with disabilities. Section 504 prohibits discrimination based on disability in programs or activities receiving federal financial assistance. For elementary and secondary school students, the Section 504 regulations require that a free appropriate public education (FAPE), as defined in the regulations, be provided to students

with disabilities in the recipient's jurisdiction. The Section 504 regulations at 34 CFR §104.33(b)(2) specifically set out that the implementation of an IEP developed in accordance with the IDEA is one means of meeting the requirement for FAPE contained in the Section 504 regulations. Therefore, many school districts develop and implement IEPs in accordance with the IDEA, to meet both the Section 504 and IDEA requirements for elementary and secondary students with disabilities who are covered under both statutes.

The IDEA and its regulations also require that States and school districts make FAPE available to eligible elementary and secondary students with disabilities and set out specific requirements for the development and content of students' IEPs. The IDEA regulations do not permit a Section 504 plan to substitute for an IEP. While this does not mean that an IEP cannot contain information or services that were previously a part of the student's Section 504 plan, a Section 504 plan that does not meet the specific IEP requirements of the IDEA may not be used to substitute for an IEP.

If this office can be of further assistance do not hesitate to contact Sheila Freedman at (202) 205-9055 or Dale King at (202) 260-1156.

Sincerely,



Stephanie Smith Lee
Director
Office of Special Education Programs

cc: Karl Wilson, USOE Director of At Risk and Special Education Services
Brenda Broadbent, USOE State and Federal Compliance Officer