

February 9, 2016

John D. Copenhaver  
Executive Director  
Technical Assistance for Excellence in Special Education  
1780 N. Research Parkway, Suite 112  
Logan, Utah 84341

Dear Mr. Copenhaver:

This letter responds to your January 4, 2016 electronic mail (email) correspondence to Lisa Pagano, Policy Specialist, in the Office of Special Education Programs' (OSEP), Monitoring and State Improvement and Planning Division. In your email, you ask whether a parent of a child who has been identified as having a disability under Section 504 of the Rehabilitation Act (hereafter, Section 504) may serve on the State advisory panel as a parent representative of the advisory panel required under the Individuals with Disabilities Education Act (IDEA).

Under 34 CFR §300.167, each State must establish and maintain an advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the State. The advisory panel membership requirements are found in 34 CFR §300.168(a). Under 34 CFR §300.168(a)(1), the State's panel must include parents of children with disabilities (ages birth through 26) and under 34 CFR §300.168(b), the majority of panel members must be individuals with disabilities or parents of children with disabilities (ages birth through 26).

The duties of the State advisory panel are outlined in 34 CFR §300.169. The advisory panel must: (1) advise the State educational agency (SEA) of unmet needs within the State in the education of children with disabilities; (2) comment publicly on any rules or regulations proposed by the State regarding the education of children with disabilities; (3) advise the SEA in developing evaluations and reporting on data to the Secretary under section 618 of the IDEA; (4) advise the SEA in developing corrective action plans to address findings identified in Federal monitoring reports under Part B of the IDEA; and (5) advise the SEA in developing and implementing policies relating to the coordination of services for children with disabilities. Parents of children with disabilities play an important role on a State's advisory panel, particularly because of their first-hand experiences with accessing and receiving special education and related services for their children, and their input is critical in enabling the State advisory panel to carry out the duties listed above.

The IDEA defines a child with a disability to mean a child who has been evaluated in accordance with the IDEA's evaluation procedures (34 CFR §§300.304 through 300.311) as having an intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance, an orthopedic impairment, autism, traumatic brain injury, and other health impairment, a specific learning disability, deaf-blindness or multiple disabilities, and who, by reason thereof, needs

special education and related services. 34 CFR §300.8(a). Therefore, OSEP interprets the reference to “parents of children with disabilities” in 34 CFR §300.168 to mean parents of children who have been evaluated and determined to have a disability under the IDEA. Thus, parents of children who do not have disabilities under IDEA would not meet the membership requirement for “parents of children with disabilities (ages birth through 26).” However, there is nothing in the IDEA that would prohibit a State from including on its advisory panel, parents of students who have disabilities under Section 504 who are not considered children with disabilities under the IDEA. Such parents could be appointed by the State to serve on the advisory panel, but the State would also be required to appoint parents of children with disabilities under the IDEA who are ages birth through 26 to satisfy the advisory panel parent membership requirement.

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.

If you have any further questions, please do not hesitate to contact Ms. Pagano at 202-245-7413 or by email at [Lisa.Pagano@ed.gov](mailto:Lisa.Pagano@ed.gov).

Sincerely,

/s/

Ruth E. Ryder  
Acting Director  
Office of Special Education Programs