



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

May 14, 2010

Dr. Rebecca Cort
NY State Education Department
Office of Vocational and Educational Services for
Individuals with Disabilities
99 Washington Avenue
One Commerce Plaza, Room 1606
Albany, New York 12234

Dear Ms. Cort:

This is in response to your March 24, 2010 electronic mail (email) communication to Alma McPherson and Angela Tanner-Dean, in the Office of Special Education Programs (OSEP) at the U.S. Department of Education (Department). Specifically, your questions were in regard to General Education Development (GED) credentials as they relate to the Individuals with Disabilities Education Act (IDEA) requirements regarding a free appropriate public education (FAPE). Below are your questions and responses from OSEP.

Question 1: "While I know that students through age 21 must be offered FAPE, if they choose to enter a GED program and not access the special education services within more traditional secondary education programs normally recommended on their IEPs [individualized education programs], do they then give up their right to any special education services?"

OSEP'S RESPONSE: In general, States and local educational agencies (LEAs) must make available a FAPE to all children with disabilities within their jurisdictions. (See 34 CFR §300.101) FAPE is defined as including appropriate preschool, elementary and secondary school education in the State involved. (See 34 CFR §300.17) Therefore, under the Individuals with Disabilities Education Act (IDEA), the LEA is not required to provide students who have left traditional secondary education programs and entered a GED test preparation program, with special education services in the GED test preparation program unless the State considers the GED test preparation program to be a part of an appropriate secondary education. If the GED test preparation program is not a part of secondary education in the State, and the eligible student re-enrolls in a regular high school program, the requirement to provide FAPE again applies. In any case, under 34 CFR §300.102(a), the obligation to make a FAPE available to a student does not end until the student obtains a regular high school diploma or exceeds the State's maximum age of eligibility for FAPE, whichever comes first.

Question 2: "Could a student or parent argue at an impartial hearing that the GED program is the appropriate transition program to post secondary and that the IFP team should be compelled to recommend a GED with special education supports even though it doesn't lead to a regular diploma? For example, could a district be compelled to offer a special class GED program?"

OSEP's RESPONSE: Nothing in the IDEA limits or restricts a parent's right to propose that the student participate in a GED test preparation program as the resolution to a problem identified as part of a due process complaint submitted under 34 CFR §300.508, specifically in response to 34 CFR §300.508(b)(6). Similarly, nothing in the IDEA prohibits an IEP Team from offering a GED test preparation program with special education supports as part of a transition program if the IEP Team, including the parent and the student, believes that such a program is the most appropriate program for the student, recognizing that achievement of a GED credential does not constitute graduation with a regular diploma and does not satisfy the LEA's obligation to make FAPE available until the student obtains a regular diploma or exceeds the upper limit of FAPE-age in the State, whichever occurs first.

Question 3: "If a student with a disability goes into a GED program and the district chooses to provide special education supports, can IDEA flow-through funds be used for those supports?"

OSEP's RESPONSE: Under 34 CFR §300.202(a), amounts provided to the LEA under Part B of the IDEA: (1) must be expended in accordance with the applicable provisions of Part B; (2) must be used only to pay the excess costs of providing special education and related services to children with disabilities, consistent with 34 CFR §300.202(b); and (3) must be used to supplement State, local, and other Federal funds and not to supplant those funds. Funds flowed through from the SEA to the LEA pursuant to the requirements of IDEA can only be used consistent with these requirements. Therefore, if the LEA chooses to provide special education supports to a student with a disability who is attending a GED test preparation program, such supports can be funded using IDEA funds, if the supports are provided pursuant to an IEP.

Question 4: "In addition to the questions we asked before regarding whether enrollment only in a GED program could be considered FAPE and must be an option under IDEA, it would also be useful to know if there is a different requirement under Section 504 for students in GED. If IDEA doesn't apply, are reasonable accommodations still required under ADA?"

OSEP's RESPONSE: OSEP does not have authority to interpret statutes other than the IDEA, such as section 504 of the Rehabilitation Act of 1973, as amended, or the Americans with Disabilities Act. We have submitted your letter to the Department's Office for Civil Rights for their response to this question.

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.

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If you have additional questions, please do not hesitate to contact Angela Tanner-Dean at 202-245-6320 or by email at Angela.Tanner-Dean@ed.gov.

Sincerely,

A handwritten signature in black ink, reading "Alexa Posny". The signature is written in a cursive, flowing style.

Alexa Posny, Ph.D.
Acting Director
Office of Special Education Programs