



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

DEC 15, 2004

Karl A. Wilson
Director of Special Education
Utah State Office of Education
250 E. Cesar E. Chavez Blvd. (500 South)
P.O. Box 144200
Salt Lake City, UT 84114-4200

Dear Mr. Wilson:

This letter is a follow-up to your facsimile to the Office of Special Education Programs (OSEP) dated August 2, 2004, in which you transmitted a letter dated July 30, 2004, written to Ms. Sheila Friedman. Your July 30, 2004, letter to Ms. Friedman contains the interpretation of the Utah State Office of Education (USOE) of Utah State Board of Education Special Education Rule III.I.10. That rule provides:

When a specific accommodation is necessary for a student to have access to his or her regular education, such an accommodation may be documented on a separate Section 504 accommodation plan and/or the IEP.

In response to an earlier inquiry from Daniel W. Morse of the Disability Law Center about Rule III.I.10, OSEP asked USOE for clarification of the rule. Your August 2, 2004, letter explains that "[s]ection III.I.10 of the Utah State Board of Education Special Education Rules is not meant to imply that services required under IDEA could be placed on a Section 504 plan rather than the Individualized Education Program (IEP) plan."


We have determined that USOE's interpretation of Rule III.I.10 is consistent with IDEA, provided that the following conditions are met. Specifically, for students found eligible for services under the IDEA, any accommodations deemed necessary for the student to receive a free appropriate public education under IDEA must be included on the child's individualized education program (IEP) developed in accordance with 34 CFR §§300.340-300.350. This is so, regardless of whether IDEA-eligible students are also covered by Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II).

However, if a student is found ineligible for services under Part B of IDEA, but is found qualified to receive services under Section 504 and Title II, the accommodation could be included on the student's Section 504 plan. Please note that the Section 504 regulation at 34 CFR §104.33(b)(2) also provides that implementation of an IEP developed in accordance with the IDEA is one means of meeting the Section 504 free appropriate public education standard set out at 34 CFR §104.33(b)(1). Thus, many school districts utilize IEPs for their Section 504 students.

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We hope that you find this information helpful. If we can be of further assistance, please contact Ms. Sheila Friedman at (202) 245-7349.

Sincerely,

 for

Stephanie Smith Lee
Director
Office of Special Education Programs

Cc: Daniel W. Morse