



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

March 30, 2001

(Address blacked out)

Dear (Name blacked out):

This is in response to your letters to the Office of Special Education Programs (OSEP) regarding obtaining accommodations for certain portions of general State and district-wide assessments of x, as well as more general concerns that you have about the participation of students with disabilities in State and district-wide assessments in Florida. This Office also received related correspondence from the Advocacy Center for Persons with Disabilities, Inc. requesting an advisory opinion on those subsections of Florida's then current State Board of Education Rules regarding authorized testing modifications and accommodations for students with disabilities. As a result of conversations between you and members of my staff, you sent an email message to OSEP on August 19, 1999 indicating that you had communicated with the Advocacy Center on the status of their position on the three subsections of the Florida State Board of Education Rules raised in their prior letter. You concluded in your email that the only issue that needed to be pursued related to "the legality of the prohibition of the use of calculators by all students--including those for whom a calculator represents assistive technology--on Statewide assessments."

Although you have spoken with members of my staff on a number of occasions, I regret that these conversations have not resolved your concerns satisfactorily. This letter will summarize the requirements of Part B of the Individuals with Disabilities Education Act (Part B), as amended by the Individuals with Disabilities Education Act Amendments of 1997, Pub. L. 105-17, (IDEA '97) that are relevant to your concerns and restate the oral advice provided to you during telephone conversations with members of my staff. In addition, I am enclosing OSEP memorandum 00-24 issued on August 24, 2000. This memorandum provides guidance on the requirements in IDEA '97 relating to the participation of students with disabilities in State and district-wide assessments.

A primary focus of IDEA '97 is ensuring each disabled student's appropriate involvement and meaningful progress in the general curriculum, that is, the same curriculum as for nondisabled students. 20 U.S.C. §1414(d)(1)(A) and 34 CFR §300.347. IDEA '97 also emphasizes the importance of holding students with disabilities to high expectations and challenging content and performance standards. See 20 U.S.C. §1400(d).

Consistent with these important principles, IDEA '97 includes specific provisions regarding the participation of students with disabilities in general State and district-wide assessment programs. See 20 U.S.C. §1412(a)(17). This statutory provision is implemented by the Department's regulation at 34 CFR §300.138. Under the applicable requirements, States and public agencies must ensure that students with disabilities participate in general State and district-wide

assessment programs, with appropriate accommodations and modifications in administration, where necessary. 34 CFR §300.138. For those children who cannot participate in general State and district-wide assessments, even with appropriate accommodations and individual modifications, the State educational agency, or local educational agency, as appropriate, must develop guidelines for the participation of children with disabilities in alternate assessments, and must conduct those assessments beginning not later than July 1, 2000. 20 U.S.C. §1412(a)(17)(A)(i)-(ii) and 34 CFR §300.138(b). Each student's individualized education program (IEP) must include "[a] statement of any individual modifications in the administration of State or district-wide assessments of student achievement that are needed in order for the child to participate in the assessment." 34 CFR §300.347(a)(5)(i). If the IEP team determines that the child will not participate in a particular State or district-wide assessment of student achievement (or part of an assessment), the IEP team must include a statement of why that assessment is not appropriate for the child, and how the child will be assessed. 34 CFR §300.347(a)(5)(ii).

In the situation you pose, it is our understanding that x, has not been permitted to use a calculator in the fourth-grade mathematics computation portion of the Florida Comprehensive Assessment Test (FCAT). In our most recent communications with you, we had suggested that you forward us a copy of x's IEP to ascertain what determinations x IEP team had made regarding x participation in the fourth grade mathematics computation portion of the FCAT, but we have not received this information from you. Under Part B, the determination of whether a student should participate in an assessment with or without accommodations or individual modifications, and, if so, what accommodations or modifications are appropriate for the child generally is the responsibility of the IEP team.

The State cannot limit the authority of the IEP team to select individual accommodations and modifications in administration needed for a child to participate in an assessment. However, a State may develop a comprehensive policy on the use of testing accommodations (including the conditions and instructions for appropriate use of specific accommodations and how scores are to be reported and used). The State needs to ensure that its policy is consistent with the requirement at 34 CFR §300.347(a)(5)(i) that the IEP team has the responsibility and authority to determine what, if any, individual modifications in administration are needed for a particular child. The IEP teams need to understand and consider the implications of State policies on the reporting and use of scores in addressing what individual modifications and accommodations are appropriate for an individual child with a disability.

In the situation that you describe, the State may conclude that the use of a calculator on the specific portion of a test used for the express purpose of measuring a student's ability to perform mathematical computations would not preserve the integrity or validity of the test. The State may determine that because the results of the test would measure only the student's ability

to perform mathematical computations with the use of a calculator, which is not the skill that the test is intended to measure, the test results cannot be used for certain purposes. However, as noted above, the State cannot limit the authority of the IEP team to select individual accommodations and modifications in the administration that are needed in order for the child to participate in a particular assessment.

As you have emphasized in your communications with OSEP, we also understand your concern over the larger issue about the appropriate administration of State and district-wide assessments for all students with disabilities in Florida and how the issuance of a special diploma impacts postsecondary opportunities for these students. As you know, OSEP is involved in various activities to support positive results for children with disabilities. In conjunction with these activities, OSEP recently completed a review of FDE for the purpose of assessing compliance in the implementation of IDEA. We are in the process of analyzing data gathered from the public input and on-site data collection phases of the review. OSEP is examining the issue of the special diploma through its continuous improvement monitoring process and will require appropriate corrective action if violations are identified as a result of the most recent review of FDE.

Please be assured that the Department considers the issue of the participation of students with disabilities in general State and district-wide assessment programs to be one of our highest priorities. An important technical assistance and dissemination project that OSEP funds is the National Center on Educational Outcomes (NCEO). NCEO's mission is to work with Federal and State agencies to facilitate and enrich the development and use of indicators of educational outcomes for students with disabilities. Recognizing that students with disabilities have been inappropriately excluded from national and State data collection programs, NCEO is exploring ways in which students with disabilities can be appropriately included in these assessment programs. For more information about the work that NCEO has done in the area of assessment accommodations, you may wish to contact NCEO at the following address and telephone number:

Martha L. Thurlow, Director
University of Minnesota
350 Elliott Hall
75 East River Road
Minneapolis, MN 55455
(612) 626-1530
<http://www.coled.umn.edu/nceo>

Of relevance here is a recent NCEO paper (Policy Directions #11, May 2000) that discusses the issue of "non-approved accommodations" in assessment programs. NCEO recommends that when non-approved accommodations are judged to compromise the integrity or validity of an assessment, States can collect and use additional evidence that will allow a student to

demonstrate competency in lieu of a single test score. This recommendation is consistent with a standard set forth in a 1999 document entitled Standards of Educational and Psychological Testing published jointly by the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education. Standard 13.7 in that document states, "In educational settings, a decision or characterization that will have major impact on a student should not be made on the basis of a single test score. Other relevant information should be taken into account if it will enhance the overall validity of the decision." This standard is also consistent with the good testing practices set forth in the Office for Civil Rights' recently released guidance entitled The Use of Tests when Making High-Stakes Decisions for Students: A Resource Guide for Educators and Policymakers.

It is also anticipated that OSEP and the Department will be providing further guidance on the participation of students with disabilities in general State and district-wide assessment programs in the near future. In the meantime, please find enclosed for your information the comments and responses on participation of students with disabilities in general State and district-wide assessment programs contained in the final Part B regulations, published in the Federal Register on March 12, 1999 at 64 Fed. Reg. 12406.

We hope that you find this explanation and the enclosed information helpful. If you require further assistance, please contact Dr. JoLeta Reynolds in OSEP's Office of the Director at (202) 205-5507, or Ms. Sheila Friedman, Florida State Contact at (202) 205-9055.

Sincerely,



Kenneth R. Warlick
Director
Office of Special Education Programs

Enclosure

cc: Shann Goff
Florida Department of Education