
UTAH STATE BOARD OF EDUCATION SPECIAL EDUCATION SERVICES REGULAR AND SPECIAL EDUCATOR PARTICIPATION IN INDIVIDUALIZED EDUCATION PROGRAM (IEP) MEETINGS

Limitations on Regular and Special Education Teacher Participation

The Individuals with Disabilities Education Act (IDEA) regulations and the Utah State Board of Education Special Education Rules (Rules) specify that regular and special education teachers on the IEP team must be teachers “of the student” (34 CFR § 300.321; Rules III.E.). The regular education teacher who serves as a member of a student’s IEP team should be a teacher who is, or may be, responsible for implementing a portion of the IEP, so that the teacher can participate in discussions about how best to teach the student (34 CFR. Pt. 300 App. A -- Question 26 (1999)). Similarly, the special education teacher or provider of the student who is a member of the student’s IEP team should be the person who is, or will be, responsible for implementing the IEP (34 CFR. Pt. 300 App. A -- Question 26 (1999)). The IDEA leaves decisions about which special education teachers should be included in the IEP meeting to local officials based on the needs of the student (71 Fed. Reg. 46,670 (2006)).

The 10th Circuit Court of Appeals does not have case law that pertains to this subject; however, the cases outlined below may be instructive in developing further understanding of this issue. These cases illustrate the court interpretations that staff may participate on an IEP team as a student’s regular or special education teacher if they have either previously provided educational services, currently provide services, or may provide services in the future.

Regular Education Teacher Case Law

- The teacher chosen to serve as the regular education teacher on a student's IEP team does not need to be the student's current teacher. However, the individual selected must have taught the student. *A.G. v. Placentia-Yorba Linda Unified Sch. Dist.*, 52 IDELR 63 (9th Cir. 2009, unpublished).
- A prospective regular education teacher, who has never taught the student, is an appropriate member of student's IEP team if they will or may be responsible for implementing the student's IEP. *Hensley v. Colville Sch. Dist.*, 51 IDELR 279 (Wash. Ct. App. 2009).
- A California district did not violate the IDEA when it asked an assistant principal who taught a Spanish class to serve as the regular education teacher on a high schooler's IEP team. The 9th U.S. Circuit Court of Appeals affirmed the District Court’s ruling that the

student's proposed IEP was procedurally and substantively appropriate. *Z.R. v. Oak Park Unified Sch. Dist.*, 66 IDELR 213 (9th Cir. 2015, unpublished).

- *Case Note: While a court may accept the presence of any regular education teacher on a student's IEP team, the better practice is to include a teacher who works with the student. The district here invited all the student's regular education teachers to the student's IEP meeting. Their absence [the regular education teachers] bolstered the district's decision to include a Spanish teacher who might work with the student.*

Special Education Teacher Case Law

- Although the special education teacher or provider on a student's IEP team does not need to be the student's current teacher or provider, the individual selected must have worked with the student. *R.B. v. Napa Valley Unified Sch. Dist.*, 48 IDELR 60 (9th Cir. 2007).
- It is a denial of a free appropriate public education (FAPE) when a special education teacher who was not actively teaching the student is assigned to IEP team solely to fulfill its requirement to include a special education teacher. *New York City Dept. of Educ.*, 45 IDELR 236 (SEA NY 2005).

IEP Team Membership Regulation (34 CFR § 300.321; Rules III.E.)

The LEA must ensure that the IEP team for each student with a disability includes:

1. *The parent(s) of the student or the adult student;*
2. *Not less than one regular education teacher of the student (if the student is, or may be, participating in the regular education environment);*
3. *Not less than one special education teacher of the student, or where appropriate, not less than one special education provider of the student;*
4. *A representative of the LEA who:*
 - a. *Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students with disabilities;*
 - b. *Is knowledgeable about the general education curriculum; and*
 - c. *Is knowledgeable about the availability of resources of the LEA.*
 - d. *An LEA may designate an LEA member of the IEP team to also serve as the LEA representative, if the above criteria are satisfied.*
5. *An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in this section;*
6. *At the discretion of the parent or adult student or the LEA, other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate; and*
7. *Whenever appropriate, the student with a disability.*