

MEMORANDUM

Date: December 4, 2014

To: Susan Loving, Transition Specialist

From: Carol Lear, J.D., Director School Law and Legislation

Subject: Instructional time and applicability of rules for students with disabilities

You asked me to review the State Board of Education Rules and any applicable laws that might apply and provide you information about the right of students with disabilities to the same educational opportunities and instructional time to which all public school students are entitled. A series of court cases have affirmed that students with disabilities cannot be excluded from public education and, implicitly, that children with disabilities were capable of benefiting from an education; such children must be provided with an opportunity for a free public education. (*Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania (PARC)*(Pa., 1972). *PARC* was followed by the case *Mills v. Board of Education of the District of Columbia* (D.C., 1972). The court directed:

That no [disabled child eligible for a publicly supported education in the... public schools shall be excluded from a regular school assignment by a Rule, policy, or practice of the Board of Education.

Utah law provides generally that the Utah State Board of Education (Board) shall establish minimum standards governing. . . “the academic year.” In fulfilling its responsibility, the Board promulgated

R277-419. The Rule requires school districts and charter schools to offer instructional time:

(1) LEAs shall conduct school for at least 990 instructional hours and 180 school days each school year; exceptions to the number of school days for individual students and schools are provided for in R277-419-8.

The exception provides:

A. An exception for school attendance for public school students may be made at the discretion of the local board, in the length of the school day or year, for students with compelling circumstances. The time an excepted student is required to attend school shall be established by the student's IEP or SEOP.

Nothing in R277-419 or elsewhere in Utah law allows a school to make a general policy that students with disabilities who are served by the public school system (this would include, in Utah, students through their 21st birthdays whose IEPs so designate) may receive less instructional time than students without disabilities unless their IEPs provide specifically for a different amount of time.

I hope that this provides clarification and ends any general practice of providing a lesser amount of instructional time to students with disabilities than offered to students without disabilities.