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“Field Trips, Extra Curriculars and Sports:
Equal Access for District Programs and Activities”

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I. Introduction

II. Access to Extracurricular Programs and Other School Activities

- A. Access to, and participation in, extracurricular athletic opportunities (club, intramural, or interscholastic) provides important health and social benefits to all students, particularly those with disabilities, which include socialization, improved teamwork and leadership skills, and fitness.
- B. In June, 2010, the Government Accountability Office issued a report to Congress in which it found that students with disabilities were not being afforded an equal opportunity to participate in extracurricular athletics in public elementary and secondary schools.
- C. On January 25, 2013, the U.S. Department of Education’s Office for Civil Rights (the entity responsible for enforcing Section 504) issued additional guidance in order to clarify and communicate to schools their responsibilities under Section 504 regarding the provision of extracurricular athletics. The 2013 guidance attempts to elucidate a school district’s duties with respect to three of Section 504’s core requirements:
 - 1. To refrain from acting on generalizations and stereotypes;
 - 2. To ensure equal opportunity for participation; and
 - 3. To offer separate or different athletic opportunities.

- D. A school district’s legal obligation to comply with Section 504 and the Department of Education’s regulations supersedes any rule of any association, organization, club, or league that would render a student ineligible to participate, or limit the eligibility of a student to participate, in any aid, benefit, or service on the basis of disability. 34 C.F.R. §104.10(a), 34 C.F.R. §104.4(b)(1).
- E. Mayer (AZ) Unified School District No. 43, 122 LRP 48490 (OCR 2022).
1. OCR found that a special education teacher’s unilateral rule that her students could not participate in school sports until they received “behavior points” was a potential violation of Section 504, as it permitted a single employee the ability to deny students the opportunity to participate in extracurricular activities based on presumptions about their disabilities. The teacher’s stated reason for implementing the points plan was due to a concern that the students would demonstrate aggressive behaviors in unstructured extracurricular programs.
 2. Based on its investigation, OCR had serious concerns that the teacher was categorically excluding students with disabilities from participation in extracurricular sports based upon presumptions about the students’ disabilities rather than individualized determinations about the students’ needs, and whether any reasonable modifications were needed to ensure the students’ equal participation in such programs.
 3. OCR also had concerns with placing the decision of student participation in the hands of one teacher, rather than individualized determination based upon student needs made by a group of persons who are knowledgeable about the students. Ultimately, the district entered into a voluntary resolution agreement to resolve OCR’s compliance concerns.

III. Accommodations for Participation in Extracurricular and Other Competitive Activities

A. Requirements.

1. A school district may not operate its extracurricular programs or activities on the basis of generalizations, assumptions, prejudices, or stereotypes about disability generally, or specific disabilities in particular.
2. A school district also may not rely on generalizations about what students with a type of disability are capable of – one student with a certain type of disability may not be able to play a certain type of sport, but another student with the same disability may be able to play that sport.

3. A school district that offers extracurricular athletics must do so in such a manner as is necessary to afford qualified students with disabilities an equal opportunity for participation. 34 C.F.R. §104.37(a), (c).
4. Making reasonable modifications.
 - a. Based on individualized inquiry to determine whether the modification is necessary.
 - b. If necessary, the modification must be allowed, unless doing so would result in a fundamental alteration of the nature of the extracurricular athletic activity.
5. Providing those aids and services that are necessary to ensure an equal opportunity to participate, unless the school district can show that doing so would be a fundamental alteration of the nature of the extracurricular athletic activity.
6. A school district can refrain from making modifications or from providing aids or services to the athlete with a disability if it can demonstrate that doing so would fundamentally alter that particular athletic program. Southeastern Cmty. Coll. v. Davis, 442 U.S. 397 (1979). In Davis, the U.S. Supreme Court held that a nursing college could not be compelled to undertake affirmative action that would dispense with the need for effective oral communication and instruction so that a deaf applicant could receive admission. The Court made clear that Section 504 imposes no requirement upon an educational institution to lower or to effect substantial modifications of standards to accommodate a student with a disability.
7. Whether any particular modification or form of aid or service provided to an athlete with a disability would constitute a “fundamental alteration” of the athletic program is a question that will have to be answered on an individual basis in light of the unique facts and circumstance of the case at hand.
 - a. A change that alters an essential aspect of the activity or game that would be unacceptable even if it affected all competitors equally would be considered “fundamental,” and is not required.
 - Lowering the basketball hoop?
 - Smaller track hurdles?
 - No tackle football?

b. Alternatively, a change that has only a peripheral impact on the activity or game itself might nevertheless give a particular player with a disability an unfair advantage over others and, for that reason, “fundamentally alter” the character of the competition.

- A swimmer using flippers?
- Larger tennis racket?
- Wheelchair for track event?

8. Even if a specific modification would constitute a fundamental alteration, a school district is still required to determine if other modifications might be available that would permit the student’s participation.

9. A school district may adopt bona fide safety standards needed to implement its extracurricular athletic program or activity.

10. However, schools may still require a certain level of skill or ability for participation in a competitive program or activity. The law does not guarantee anyone a spot on the team. Furthermore, students with disabilities do not have a right to participate in games; a coach’s decision as to whether a student with a disability will participate in a game must be based on the same criteria the coach uses for all other players (performance reflected during practice sessions).

B. Offering Separate or Different Athletic Opportunities.

1. Pursuant to 34 C.F.R. §104.34(b), school districts must “ensure that handicapped persons participate with non-handicapped persons in such activities and services to the maximum extent appropriate to the needs of the handicapped person in question.”

2. Section 504 does not require districts to create alternative programs for students with disabilities who cannot participate in extracurricular activities with accommodations. Snohomish (WA) Sch. Dist. No. 201, 23 IDELR 97 (OCR 1995); and Shoreline (WA) Sch. Dist. No. 412, 24 IDELR 774 (OCR 1996).

3. In In re: Dear Colleague Letter of Jan. 25, 2013, 62 IDELR 185 (OCR 2013), OCR explained that districts have no obligation to create disability-specific team sports, such as wheelchair basketball or wheelchair tennis, to ensure that students with disabilities have an equal opportunity to participate in extracurricular activities.

- a. Nonetheless, OCR urged districts to consider creating additional opportunities for students with disabilities who are unable to participate in traditional sports with modifications, aids, or services. OCR further observed if a district chooses to provide separate activities for students with disabilities, it must provide those activities with the same level of support as comparable activities for students without a disability.
- b. These separate athletic opportunities should be supported equally, as with the school district's other athletic activities.
 - (1) Disability-specific teams.
 - (2) District-wide or regional teams.
 - (3) Mix male and female students with disabilities on teams together.
 - (4) Offer allied or unified sports teams on which students with disabilities participate with students without disabilities.

C. Case Examples.

1. Safety concerns and ability level justify student's exclusion from choir activities. Grosse Pointe (MI) Pub. Schs., 35 IDELR 225 (OCR 2001).

Finding the district offered nondiscriminatory reasons for excluding a high school student with a visual impairment from school choir's dance activities, OCR ruled the exclusion did not violate Section 504 or the ADA.

2. Failure to notify students of extracurricular activities and events. Benton Carroll Salem Local Sch. Dist., 65 IDELR 156 (OCR 2014).

- a. The school district failed to ensure that two middle school students in a self-contained classroom received information concerning extracurricular activities and upcoming events.

- b. OCR stated the district was not compliant with Section 504. The district's responsibility under Section 504 and the Americans with Disabilities Act Title II is to educate students with disabilities, for both academic endeavors and extracurricular activities and events. This responsibility includes identifying students of upcoming events and ensuring that they can participate in activities appropriately.

3. Wooster City (OH) School District, 64 IDELR 154 (OCR 2014).

- a. The parents of a student with a disability who uses a wheelchair filed a complaint with OCR alleging that the district discriminated against the student by failing to allow him to participate on the track team as a sprinter. Upon requesting to participate on the district's track team, the student was told that he could compete in a separate heat, alone on the track unless there was another wheelchair athlete against whom the student could compete. The parent responded by requesting that this separate heat and competition be conducted at the same time as those athletes who were running on foot.
- b. OCR determined that the district discriminated against the student based on his disability when the student was not permitted to race at the same time as individuals racing on foot during track meets. OCR noted that allowing a student who used a wheelchair to participate alongside athletes on foot in a separate lane was a reasonable accommodation that did not fundamentally alter the sport.

4. Fairless (OH) Local Schools, 122 LRP 48530 (OCR 2022).

- a. Parents of a student on a 504 Plan alleged that the school district improperly disciplined and/or excluded the student from a sports team based on his disability. When behavior issues arose during the student's participation on a school athletic team, the parent requested a 504 team meeting, where she learned that the district was under the mistaken belief that the 504 Plan "did not go outside the classroom" and thus did not require accommodations be made for the student's participation in extracurricular activities.
- b. The district denied that the complainant requested an accommodation, and asserted that it did not discipline the student, but rather reprimanded the team as a whole.
- c. Ultimately, OCR found insufficient evidence that the district improperly disciplined or excluded the student, but noted compliance concerns regarding the district's practices for disability-related accommodations for extracurricular activities. Of particular concern was the district's failure to explore the student's individualized need for accommodations to participate in extracurriculars despite being informed that disability-related issues for the student were impacting his ability to participate on the team.

5. Questions and Answers on the ADA Amendments Act of 2008 for Students With Disabilities Attending Public Elementary and Secondary Schools, 58 IDELR 79 (OCR 2012), Question 11:

“For example, suppose a student is diagnosed with severe asthma that is a disability because it substantially limits the major life activity of breathing and the function of the respiratory system. However, based on the evaluation, the student does not need any special education or related service as a result of the disability. This student fully participates in her school’s regular physical education program and in extracurricular sports; she does not need help administering her medicine; and she does not require any modifications to the school’s policies, practices, or procedures. The school district is not obligated to provide the student with any additional services. The student is still a person with a disability, however, and therefore remains protected by the general nondiscrimination provisions of Section 504 and Title II.”

6. Travis (CA) Unified Sch. Dist., 58 IDELR 262 (OCR 2011).

- a. Student had asthma and was on an “asthma action plan.”
- b. Third quarter of the 2010-2011 school year, the student’s grade in PE dropped from an A to a D, because the student failed to run a mile in the required time.
- c. In February 2011, the parent requested a 504 Plan, but was denied.
- d. OCR found a violation of FAPE under Section 504. According to OCR, the “asthma action plan” was insufficient, because it:
 - (1) Was a generic plan;
 - (2) Was not based on an evaluation of the individual needs of the student; and
 - (3) Did not provide the 504 procedural safeguards.
- e. Pursuant to a voluntary resolution agreement, the district was required to:
 - (1) Make appropriate changes to the student’s PE grade;
 - (2) Train personnel;

- (3) Review all Individualized Health Care Plans and asthma action plans;
- (4) Convene the 504 team and consider:
 - (a) Whether the student needs a peak flow meter and schedule for its use;
 - (b) Potential triggers for asthma symptoms;
 - (c) Accommodations (*e.g.*, prescribed pre-exercise medication; longer, gradual warm up; rest periods; lower-intensity activities; longer allotted time for timed runs) and identification of circumstances when required; access to medication during PE; and compensatory services.

IV. Field Trips

A. Hackett (AR) School District, 123 LRP 15925 (OCR 2023).

1. A kindergarten student was identified as a student with a specific learning disability. The Student was placed in the regular classroom for half the school day and provided therapy or direct instruction for the rest of the school day.
2. The Student's teacher (Teacher) emailed the Parent to inform her that the Student's class would be taking a field trip to a local city park. The field trip required the students to walk from the school to the park--a trip that included crossing a highway--and the Teacher expressed concern for the Student's safety. The Teacher told the Parent that the Student could only attend the field trip if the Parent came too, otherwise the Student would have to stay home. The Parent emailed back the same day to say that the Student would stay home because the Parent had to work. The Student stayed home while her class went on the field trip.
3. The Student subsequently was diagnosed with autism. Based on this new diagnosis, the Student's IEP team changed her placement for first grade to be primarily in a self-contained special education classroom.

4. The regular first grade and kindergarten classes attended the county fair. Most of the students in the self-contained class, including the Student, did not attend this field trip. The District informed OCR that the Teacher who coordinated this field trip did not invite the self-contained class. According to the District, only one student from the self-contained class attended this field trip because that student's sibling was in the regular classroom and their parent took both children on the field trip.
5. Based on this evidence, OCR had concerns about whether or not the District treated the Student differently based on her disability or provided her the same opportunity to participate in educational services, such as field trips, provided by the District. The District agreed to enter into a resolution agreement requiring the Student's IEP team to convene and consider whether, as a result of not attending field trips, the Student needed different or additional services, including compensatory services.

B. Terrell County (GA) Charter School System, 120 LRP 31716 (OCR 2020).

1. A second-grade student had a 504 Plan due to diabetes. The Student participated in the District's Saturday School. The District informed the parent that someone would need to administer the Student's insulin after meals as there were no trained staff members who could administer the insulin during the program. The parent decided to take the Student home and not allow her to return to the Saturday School.
2. During that same school year, the principal told the parent that in order for the Student to participate in the field trip for the second-graders, the parent would need to attend to administer the insulin because there were no trained staff who could administer the insulin during the field trip.
3. The District entered into a resolution agreement with OCR requiring the District to convene a meeting to determine whether the Student's current 504 Plan provides her with FAPE and revise the plan as necessary to ensure the Student is able to participate in non-academic and extracurricular activities, which should include field trips. Additionally, the District was required to provide staff who teach, supervise, or provide services to District students with diabetes with training regarding FAPE, including diabetic and emergency care for students with diabetes.

C. Sonkowski ex rel. Sonkowski v. Bd. of Ed. for Indep. Sch. Dist. No. 721, 36 IDELR 184 (U.S. Dist. Ct., Minn. 2002).

1. Student was a fourth grade student and a fanatic Green Bay Packers football fan. Student had ADHD. One day before a scheduled field trip to the Minnesota Vikings practice facility, including lunch with Cris Carter, Student allegedly told his teachers that he was going to say some derogatory phrases about the Minnesota Vikings to Cris Carter. Student disputed that he ever told his teachers that he was going to make such statements. Student said that the teachers were afraid that he would embarrass the school because he was such a big Green Bay Packers fan. Student was not allowed to go on the field trip.
2. The Court ruled that the school district had established a legitimate, non-discriminatory reason for not allowing Student to participate in the field trip which was not part of his education or his graded curriculum. The Court found no evidence that his exclusion from the field trip was based on his disability in violation of the ADA. The school officials expressed a legitimate and reasonable concern that he might misbehave. They were aware of the student's alleged boasts that he would make disrespectful comments to a member of the Vikings football team.

V. Before and After School Programs

- A. Section 504's protections apply to before and after school care programs operated, contracted or arranged by a public school district. See 34 C.F.R. §104.38; 34 C.F.R. §104.4.
- B. Students with a disability who otherwise qualify to attend a school-sponsored daycare are entitled to attend at the same cost as other students. See 28 C.F.R. §35.130(f) (which prohibits a public entity from placing a surcharge on an individual with a disability to cover the cost of availing aides or program accessibility).
- C. Case Examples.
 1. Evesham (N.J.) Township Sch. Dist., 57 IDELR (OCR 2011).
 - a. Parents filed a complaint with OCR alleging a violation of Section 504, claiming the school district discriminated against their daughter by requiring the parents to pay the costs for a one-to-one aide and behaviorist in order for the student to attend the district's after school care program.

- b. The student was an elementary school age student enrolled in the district. The student received special education services under an IEP to address the student's needs due to her autism. Under her IEP, the student had a one-to-one aide and was in a self-contained classroom. The student also received homebound instruction with a behaviorist for ten hours per month.
- c. The district notified the parents they could enroll the student in the after-school program provided the parents paid the regular daily tuition rate as well as the costs of a one-to-one aide and behaviorist for the student. OCR determined that as the daycare program was sponsored by the school district. The district could not, on the basis of disability, exclude a qualified person with a disability, and must take into account the needs of such persons in determining the aid, benefits, or services to be provided. OCR further found that the district would need to meet such needs of the student even if it did not directly operate the daycare program, but contracted or arranged with others to do so. Although the district argued that by providing a one-to-one aide and behaviorist it would fundamentally alter the after-school program, OCR determined that providing additional supervision in a daycare program, such as a one-to-one aide, would not ordinarily change the fundamental nature of the program which is designed to provide supervision for children.
- d. Finally, OCR determined that the district violated Section 504 and the ADA by requiring that the parents pay a surcharge for the one-to-one aide and behaviorist. OCR rejected the district's argument that the costs of such services would exceed the total revenue generated by the daycare program, finding that the school district already supplemented the operation of the daycare program, and further that the district's budget clearly could afford payment for such services for the student.

2. Archway Classical Academy Lincoln (AZ), 79 IDELR 142 (OCR 2021).

- a. Student attended a charter school where she required a 1:1 aide during the school day, in part to manage Student's behavior and prevent Student from hitting others. A private entity operated an after-school program at the charter school.

- b. The after-school program issued a document entitled “Family Behavior” that indicated the program would make “reasonable, safe accommodations” for students, but that reasonable accommodations “cannot include a 1:1 aide” and that the after-school program would not provide assistance to students “who cannot independently toilet.” After Student had multiple behavioral incidents, the after-school program dis-enrolled Student. The after-school program notified the parent, “If in the future you are able to provide an aide, please let us know and [Student] is welcome to re-enroll at that time.”

- c. The charter school argued the after-school program was a separate legal entity. In response, OCR stated that “[i]f a recipient such as the [charter school] provides significant assistance to an outside entity, and the entity is shown to have discriminated against the recipient's students on the basis of disability, the recipient must take steps to obtain compliance from the outside entity or terminate its assistance.” Ultimately, the charter school and after-school program agreed that the after-school program would modify its policies.

VI. Conclusion