

Equal Access to Extracurricular Activities for Students with Disabilities

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1. Do students with disabilities have the right to equal opportunity to participate in extracurricular activities?

Yes. Students with disabilities have the right under Section 504 of the Rehabilitation Act and Title II of the American with Disabilities Act to an equal opportunity to participate in their school's extracurricular activities.^{1, 2}

2. Do students with disabilities currently have opportunities to participate in school athletic programs that are equal to that of children without disabilities?

An investigative report by the United States Government Accountability Office (GAO) completed in 2010 reveals that, despite federal laws requiring states and schools to provide equal access to extracurricular activities, opportunities for

¹ Although this fact sheet focuses on the rights of elementary and secondary school students, postsecondary students also the right to equal access to participate in extracurricular activities.

² 34 CFR sections 104.4, 104.37; 42 U.S.C. sections 12101; U.S. Department of Education, Office of Civil Rights. (2013, January 25). Dear Colleague letter, Extracurricular Activities. Retrieved from OCR letters. Access data base:
<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201301-504.pdf>.

physical activity are limited for children and youth with disabilities. This report found that students with disabilities participated in athletics in public elementary and secondary schools at consistently lower rates than students without disabilities.³

3. What guidance is available for educational agencies regarding providing opportunities for children with disabilities to participate in school athletics?

In 2011, the United States Department of Education provided guidance regarding the inclusion of students with disabilities in physical education and athletic programs. This document is designed to provide practical suggestions and resource referrals to educational agencies and to facilitate information sharing on this important topic among states and schools.⁴ In 2013, the Office of Civil Rights (OCR) of the United States Department of Education has provided additional, detailed guidance on schools' legal responsibility to provide equal extracurricular opportunities to students **with disabilities**.⁵

4. Which agency enforces the right of students with disabilities to have equal access to extracurricular activities?

The Department of Education's Office for Civil Rights (OCR) is responsible for enforcing Section 504 and Title II of the Americans with Disabilities Act of 1990 in the context of education. OCR investigates complaints of discrimination on the

³ U.S. Government Accountability Office. (2010, June) *Students with Disabilities: More information and guidance could improve opportunities in physical education and athletics*. (Publication No. GAO 10-1519) retrieved from GAO Reports. Access data base: <http://www.gao.gov/assets/310/305770.pdf>.

⁴ U.S. Department of Education, (2011, August). *Creating Equal Opportunities for Children and Youth with Disabilities to Participate in Physical Education and Extracurricular Athletics*. Access data base: <http://www2.ed.gov/policy/speced/guid/idea/equal-pe.pdf>.

⁵ U.S. Department of Education, OCR. (2013, January 25.) Dear Colleague Letter and 2013 and Letter to Francisco Negron, Jr. December 16, 2013 Access data base: and http://chinniandmeuser.com/uploads/3/2/7/4/3274563/december_2013_ocr_clarification_re_separate_athletic_opportunities.pdf.

basis of disability as well as race, color, national origin, sex or age pursuant to these and other laws. The civil rights laws enforced by OCR extend to all state education agencies, elementary and secondary school systems, charter schools, colleges and universities, vocational schools, proprietary schools, state vocational rehabilitation agencies that receive federal funds. Areas covered include, but are not limited to, athletics and other extracurricular activities, academic programs, student treatment, discipline, recreation, and physical education.

5. Why is it important to increase opportunities for students with disabilities to participate in athletics and other extracurricular activities?

The United States Government Accountability Office and the United States Office of Education have recently underscored that access to, and participation in, extracurricular athletic opportunities provides important health and social benefits to all students, particularly those with disabilities.⁶ According to a report commissioned by the National Interscholastic Athletic Administrators Association, individuals with disabilities who participate in sports have “higher rates of academic success, are more likely to graduate from high school and matriculate in college, and experience greater career success and more options.”⁷

6. Which extracurricular athletic activities are covered by anti-discrimination laws?

Extracurricular athletics which are covered under Section 504 and Title II include club, intramural, or interscholastic (e.g., freshman, junior varsity, varsity) athletics at all education levels.⁸ In addition to athletics, extracurricular activities includes

⁶ *Creating Equal Opportunities for Children and Youth with Disabilities to Participate in Physical Education and Extracurricular Athletics*. Access data base: <http://www2.ed.gov/policy/speced/guid/idea/equal-pe.pdf>.

⁷ Active Policy Solutions, *Q and A: Disability in Sport Dear Colleague Letter*, http://www.niaaa.org/assets/OCR-Dear-Colleague_Q-and-A_2-15-13.pdf.

⁸ OCR Dear Colleague letter. <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201301-504.pdf>.

but is not limited to recreational activities, special interest groups or clubs sponsored by a public educational agency.⁹

7. Who is responsible for ensuring that students with disabilities have equal access to nonacademic and extracurricular activities?

Any entity or individual operating a preschool, elementary, secondary or adult education program or activity that receives federal financial assistance must take steps to provide nonacademic and extracurricular services and activities, including athletics, in the manner necessary to ensure that individuals with disabilities have an equal opportunity to participate in those services and activities.¹⁰

8. May a school make assumptions or generalizations about a disability to determine whether students with particular disabilities may participate in athletics or other extracurricular activities?

No. A school or other entity operating an educational program receiving federal financial assistance may not operate its program or activity on the basis of generalizations, assumptions, prejudices, or stereotypes about disability generally, or specific disabilities in particular. 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.

9. Do the Individuals with Disabilities Education Act require that school districts take steps to ensure that students who are special education eligible have access to extracurricular activities?

Yes, the Individuals with Disabilities Education Act (IDEA) requires that school districts and other public agencies ensure that each child with a disability has the

⁹ 34 CFR section 104.37(a)(2); 34 CFR section 300.107.

¹⁰ 34 CFR section 104.31.

supplementary aids and services determined by the child's IEP team to be appropriate and necessary for the child to participate in nonacademic activities.¹¹

10. Should athletics and other nonacademic and extracurricular activities be addressed in students' IEPs?

If a student is eligible for special education and needs special education, related services and/or supplementary aids, services and other supports to meet the student's unique needs so that the child can participate in nonacademic or extracurricular activities, such services and supports must be included in the students' IEP.¹² If the coach or program administrator determines that the child does not need any such services or supports or that modifications can be made to the extracurricular program so that the child can participate, the child's participation does not necessarily need to be included in the IEP.

11. Can athletic coaches be a member of an IEP team?

Yes, anyone with knowledge regarding the child can be a member of the team. If a child needs services or supports or goals to participate in athletics, the parent or school district representatives should consider inviting the coach to participate in developing the IEP.

12. What type of related services, supplementary aids, and other supports are school districts responsible for providing to ensure that students with mental health disabilities can participate in extracurricular activities?

The IEP team shall consider any related services, supplementary aids and other supports that are needed to meet a child's unique needs. For children with mental health needs this may include, but is not limited to, one or more of the following: a positive behavior support plan designed to address behaviors; counseling to teach coping or social skills related to competition or to team activities; mental health rehabilitation services to model and teach behavior skills during practices; modifications to coaching instruction which may include

¹¹ 34 CFR §300.117

¹² 34 CFR section 300.320.(a)(4)

repetition, breaking complex instructions down, providing individualized instruction or coaching to reinforce skills, modification of rules around attendance at practices so that student can go to medical appointments.

13. Are school districts required to allow students with disabilities to participate in any competitive activities regardless of the student's relevant skills or abilities?

No. School districts may require a level of skill or ability of a student in order for that student to participate in a selective or competitive program or activity. School districts must, however, afford qualified students with disabilities an equal opportunity for participation in extracurricular athletics in an integrated manner to the maximum extent appropriate to the needs of each student. This means that a school district must make an individualized inquiry to determine whether with or without reasonable accommodations or modifications to its policies, practices, or procedures, the student is qualified to participate in the competitive activity.

14. How do schools determine whether a modification or accommodation is reasonable?

If a modification or accommodation is needed to afford a student with a disability equal access to an extracurricular activity, generally, the modification or accommodation is considered reasonable unless the school can demonstrate that the requested modification would constitute a fundamental alteration of the nature of the extracurricular athletic activity or would give the student an unfair advantage over other students.¹³

15. What does the educational agency need to do in making an individualized inquiry?

The Office of Civil Rights has recently clarified that the individualized inquiry calls for a timely, reasonable good faith effort by school staff with appropriate knowledge and experience to determine whether there are reasonable

¹³ OCR Dear Colleague letter, dated January 25, 2013.
<https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201301-504.pdf>.

modifications or aids or services that would provide the student with equal access to the extracurricular activity.¹⁴

16. Are school districts required to take action if a student is being harassed on the basis of disability while the student is participating in extracurricular activities?

Yes. Schools must take steps to redress disability-based harassment that the school knows or reasonably should know about, including harassment that occurs during extracurricular activities. This includes making a prompt, thorough and impartial investigation, taking prompt steps to end harassment and its effects and to prevent harassment from reoccurring and to protect the subject of the harassment against retaliation.¹⁵

17. Does equal opportunity mean that every student with a disability is guaranteed a spot on an athletic team for which other students must try out?

No. School districts must, however, afford qualified students with disabilities an equal opportunity for participation in extracurricular athletics in an integrated manner to the maximum extent appropriate to the needs of each student. This means that a school district must make reasonable modifications to its policies, practices, or procedures whenever such modifications are necessary to ensure equal opportunity, unless the school can demonstrate that the requested modification would constitute a fundamental alteration of the nature of the extracurricular athletic activity or would give the student an unfair advantage over other students.

18. May a school district rely on rules or requirements of interscholastic federation or other athletic associations, organizations, clubs or leagues that the school district belongs to

¹⁴ OCR letter to Francisco Negrón, Jr.

http://chinniandmeuser.com/uploads/3/2/7/4/3274563/december_2013_ocr_clarification_re_separate_athletic_opportunities.pdf.

¹⁵ See Dear Colleague Letter, dated 2010 available at <http://www.ed.gov/ocr/letters/colleague-201010.html>.

exclude a student from an extracurricular program based on disability?

No. OCR has declared that school's legal obligation to comply with federal antidiscrimination laws supersedes any rule of any association, organization, club, or league that preclude or limit participation on the basis of disability.¹⁶ Schools must provide equal opportunities to students with disabilities regardless of such rules and should work with any associations to ensure that students with disabilities are not denied an equal opportunity to participate in interscholastic athletics.¹⁷

¹⁶ OCR Dear Colleague letter, dated January 25, 2013.
<https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201301-504.pdf>.

¹⁷ Id.

Prevention and Early Intervention programs implemented by CalMHSA are funded by counties through the voter-approved Mental Health Services Act (Prop 63). Prop. 63 provides the funding and framework needed to expand mental health services to previously underserved populations and all of California's diverse communities.

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Disability Rights California is funded by a variety of sources, for a complete list of funders, go to <http://www.disabilityrightsca.org/Documents/ListofGrantsAndContracts.html>.

The California Mental Health Services Authority (CalMHSA) is an organization of county governments working to improve mental health outcomes for individuals, families and communities. Prevention and Early Intervention programs implemented by CalMHSA are funded by counties through the voter-approved Mental Health Services Act (Prop 63). Prop. 63 provides the funding and framework needed to expand mental health services to previously underserved populations and all of California's diverse communities.



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