

“So You Want to be a Cheerleader”: Addressing a Student with Disabilities’ Access to Extracurricular Activities

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What are a school's responsibilities to students with disabilities and their participation in extracurricular activities?

- ▶ Section 504 regulations that require students with disabilities to have an equal opportunity for participation in nonacademic and extracurricular services and activities. OCR also shares in the enforcement of Title II of the Americans with Disabilities Act of 1990, which is a Federal law prohibiting disability discrimination in the services, programs, and activities of state and local governments (including public school districts), regardless of whether they receive Federal financial assistance. 42 U.S.C. § 12132.

What are considered extracurricular activities?

- ▶ These are activities that students participate in beyond their instruction. They can include activities such as athletics (club, intramural, or interscholastic (e.g., freshman, junior varsity, varsity), band, ROTC and choir.

A student who qualifies for special education services as Emotionally Disturbed is in band. The school is requiring the parent to ride the bus with the student to away games. Is that a violation?

- ▶ A school district is required to provide the supplementary aids and services that are necessary to allow the student to participate. If the student needs supervision, the district is required to provide it and cannot require the parent to provide that supervision.

EXAMPLE: A student has a learning disability and is a person with a disability as defined by Section 504. While in middle school, this student enjoyed participating in her school's lacrosse club. As she enters the ninth grade in high school, she tries out and is elected as a member of the high school's lacrosse team. The coach is aware of this student's learning disability and believes that all students with the student's particular learning disability would be unable to play successfully under the time constraints and pressures of an actual game. Based on this assumption, the coach decides never to play this student during games.

In his opinion, participating fully in all the team practice sessions is good enough. Would the school district be in violation of Section 504?

- ▶ OCR would find that the coach's decision violates Section 504. The coach denied this student an equal opportunity to participate on the team by relying solely on characteristics he believed to be associated with her disability. A school district, including its athletic staff, must not operate on generalizations or assumptions about disability or how a particular disability limits any particular student.

A student in a wheelchair wants to try out for cheerleader. What accommodations must be made?

- ▶ 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. This means making reasonable modifications and 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 to its program.

What if it would be unsafe for the student with disabilities to participate in the activity?

- ▶ A school district may adopt bona fide safety standards needed to implement its extracurricular athletic program or activity. A school district, however, must consider whether safe participation by any particular student with a disability can be assured through reasonable modifications or the provision of aids and services.

If a student with a disability tries out, do they automatically get to be on the team?

- ▶ Schools may require a level of skill or ability for participation in a competitive program or activity; equal opportunity does not mean, for example, that every student with a disability is guaranteed a spot on an athletic team for which other students must try out. A school district 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 the student.

How does a school district determine what is a reasonable modification?

- ▶ In considering whether a reasonable modification is legally required, the school district must first engage in an individualized inquiry to determine whether the modification is necessary. If the modification is necessary, the school district must allow it unless doing so would result in a fundamental alteration of the nature of the extracurricular athletic activity.

What would constitute a fundamental alteration?

- ▶ A modification might constitute a fundamental alteration if it alters such an essential aspect of the activity or game that it would be unacceptable even if it affected all competitors equally (such as adding an extra base in baseball).

What if it is not a direct alteration of the activity, but would give the student with the disability an unfair advantage?

- ▶ 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 and therefore, would not have to be provided.

If an accommodation that is requested would fundamentally alter the program, has the school district met it's obligation?

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

EXAMPLE: A high school student has a disability as defined by Section 504 due to a hearing impairment. The student is interested in running track for the school team. He is especially interested in the sprinting events such as the 100 and 200 meter dashes. At the tryouts for the track team, the start of each race was signaled by the coach's assistant using a visual cue, and the student's speed was fast enough to qualify him for the team in those events.

After the student makes the team, the coach also signals the start of races during practice with the same visual cue. Before the first scheduled meet, the student asks the district that a visual cue be used at the meet simultaneously when the starter pistol sounds to alert him to the start of the race. Two neighboring districts use a visual cue as an alternative start in their track and field meets. Those districts report that their runners easily adjusted to the visual cue and did not complain about being distracted by the use of the visual cue.

After conducting an individualized inquiry and determining that the modification is necessary for the student to compete at meets, the district nevertheless refuses the student's request because the district is concerned that the use of a visual cue may distract other runners and trigger complaints once the track season begins. The coach tells the student that although he may practice with the team, he will not be allowed to participate in meets. Did the school comply with Section 504?

- ▶ OCR would find that the school district violated Section 504. The evidence demonstrated that the use of a visual cue does not alter an essential aspect of the activity or give this student an unfair advantage over others. The school district should have permitted the use of a visual cue and allowed the student to compete.

EXAMPLE: A high school student was born with only one hand and is a student with a disability as defined by Section 504. This student would like to participate on the school's swim team. The requirements for joining the swim team include having a certain level of swimming ability and being able to compete at meets. The student has the required swimming ability and wishes to compete. She asks the school district to waive the "two-hand touch" finish it requires of all swimmers in swim meets, and to permit her to finish with a "one-hand touch."

The school district refuses the request because it determines that permitting the student to finish with a “one-hand touch” would give the student an unfair advantage over the other swimmers.

- ▶ OCR would find a one-hand touch does not alter an essential aspect of the activity. If, however, the evidence demonstrated that the school district’s judgment was correct that she would gain an unfair advantage over others who are judged on the touching of both hands, then a complete waiver of the rule would constitute a fundamental alteration and not be required.

If it was determined that this would be a fundamental alteration, is the district obligated to do anything else?

- ▶ If that accommodation would be a fundamental alteration, the school district would still be required to determine if other modifications were available that would permit her participation. In this situation, for example, the school district might determine that it would not constitute an unfair advantage over other swimmers to judge the student to have finished when she touched the wall with one hand and her other arm was simultaneously stretched forward.

EXAMPLE: An elementary school student has diabetes. The student is provided services that include assistance with glucose testing and insulin administration from trained school personnel. Later in the year, this student wants to join the school-sponsored gymnastics club that meets after school. The only eligibility requirement is that all gymnastics club members must attend that school.

When the parent asks the school to provide the glucose testing and insulin administration that the student needs to participate in the gymnastics club, school personnel agree that it is necessary but respond that they are not required to provide him with such assistance because gymnastics club is an extracurricular activity. Are the school personnel right?

- ▶ OCR would find that the school's decision violates Section 504. The student needs assistance in glucose testing and insulin administration in order to participate in activities during and after school. To meet the requirements of Section 504 FAPE, the school district must provide this needed assistance during the extracurricular activity.

If a student with disabilities cannot participate in the extra-curricular activities even with modifications, does the school district have to create a separate program for students with disabilities?

- ▶ No. While it is encouraged by OCR, it is not required.

There are after school programs that occur at the campus. Does the district have to provide supplemental aids and services so that the student with disabilities can participate in the after school program?

- ▶ It will depend if the program is a school sponsored program or an outside entity renting the space from the school. If it is a school program which is open admission to everyone, then the school would have to provide the supplemental aids and services. If not, the school does not have an obligation.

A student with an Intellectual Disability is in Band. There is an hour gap between when school ends and practice begins. Does the school need to provide supervision for the hour inbetween?

- ▶ No. Once school has ended, the parent is responsible for getting the student to practice.