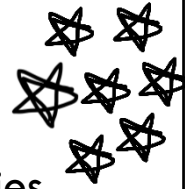


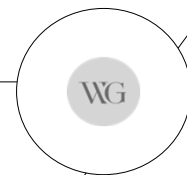
# I WANT TO BE A CHEERLEADER!

Making Accommodations for Students with Disabilities  
in Extracurricular Activities



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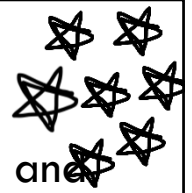
## Accommodations in Extracurricular Activities?

- Students with disabilities must have an **equitable opportunity to participate** in extracurricular activities
- The failure to provide accommodations to students with disabilities to allow them a fair chance at participation may constitute disability discrimination under Section 504 and the ADA.



## Special Ed or Section 504?

- Both! Schools have obligations under both Section 504 and the IDEA to provide students with disabilities an equitable opportunity to participate in extracurricular activities and nonacademic services
- And IEPs for special education-eligible students must incorporate needed supplementary aids and services to allow participation in the activity

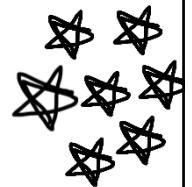


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## Cheerleading in the IEP?



Each public agency must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an **equal opportunity for participation** in those services and activities. 34 C.F.R. 300.107



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## What are those services?

Nonacademic and extracurricular services and activities may include counseling services, **athletics**, **transportation**, health services, recreational activities, special interest groups or **clubs** sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available. 34 C.F.R. 300.107



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## Examples

- A school district could be found to have discriminated against a student who is deaf or hard of hearing by refusing to provide a sign language interpreter during sports practices and games. Metro Nashville (TN) Pub. Sch. Dist., 124 LRP 1970 (OCR 07/17/23)
- Students with disabilities being required to participate in a separate “Showcase” program from their peers without disabilities constituted disability discrimination according to OCR. Alhambra (CA) Unified Sch. Dist., 124 LRP 1539 (OCR 08/15/23)

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## Is this a violation of the IDEA or Section 504 or both?



- The failure to provide appropriate accommodations, services and supports can constitute a **denial of FAPE under the IDEA** as well as **disability discrimination under Section 504**.

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## Continued

- For example, a school district violated the IDEA when the IEP Team refused to consider accommodations and supplemental services requested by a student's parents to allow the student to participate in after school sports activities and clubs. Independent Sch. Dist. No. 12, Centennial v. Minnesota Dep't of Educ., 55 IDELR 140 (Minn. 2010), cert. denied, 111 LRP 12933 , 131 S. Ct. 1556 (2011).

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## Let's Talk About the Process



Notice of Events



Tryout Procedures



IEP and Section 504 Meetings



Collaboration and Information Sharing with Parents/Organizations



Excellent customer service reduces risk of challenge, even if the meeting ends without consensus

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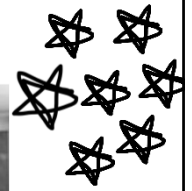
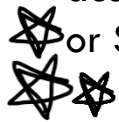
## Notice

- How does the school communicate opportunities for extracurricular activities to students and to parents? Are ALL students included within the information sharing process?
- Using a variety of methods to let students and parents know about upcoming extracurricular events and activities helped a school district defend an allegation that a student with a disability was denied an equal opportunity to participate in the activities in which he wishes to participate. Santa Fe R-X Sch. Dist., 62 IDELR 99 (SEA MO 2013)

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## Review Tryout Procedures

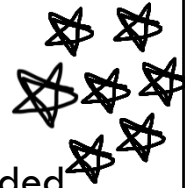
- Must be nondiscriminatory
- Equitable opportunities for students with disabilities to participate in tryouts
- Do not leave final decision on accommodations to coach or sponsor – this is best accomplished via the IEP Team or Section 504 Committee



## For Example



- A middle school swim coach decided the student didn't need a sign language interpreter during transportation to swim meets.
- That landed the school district in hot water. A special education hearing officer determined that the school violated the student's rights under the IDEA by not leaving the decision regarding aids and services needed to the IEP Team.



## Defensible decisions

**Discuss Extracurriculars  
at Annual Meeting or If  
Needed, a Brief Meeting**

**Decisions Must Be  
INDIVIDUALIZED**

**Include  
Accommodations for  
Tryouts and for  
Participation in the  
Meeting Documentation**

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## Paula Wants to be a Cheerleader

**INQUIRE**

- Has Paula received information about tryouts?
- Is Paula an individual with a disability?
- Is Paula eligible for special education services?

**ARD**

- Did the Annual ARD/IEP address accommodations for extracurricular activities?
- If not, call a meeting of the ARD committee/IEP Team

**504**

- If Paula is not eligible for special education, is she otherwise qualified under Section 504?
- If so, did the 504 committee address extracurricular activities?
- If not, call a Section 504 meeting.

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## How to discuss accommodations at the meeting?

- First, are we talking about tryouts or the activity itself?
- Next, what must students do to tryout? For example, jump, cheer, throw a ball, kick a ball? You need the coach or activity sponsor for this piece.
- Then, make an individualized inquiry on reasonable modifications or necessary aids and services that would provide the student with an equal opportunity to participate.



## Back to Paula

- What skills must be displayed for Paula to successfully tryout for cheerleader?
- What accommodations does Paula require to have an equitable opportunity to try out? For example, if Paula is a student who is deaf, Paula will require a sign language interpreter during tryouts to interpret the oral instructions for the routine. If Paula is a student with an emotional disability, she may need access to a person or object to assist with overcoming anxiety during tryouts.

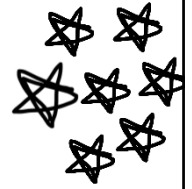


All decisions must be individualized. Accommodations are not one size fits all.





## More



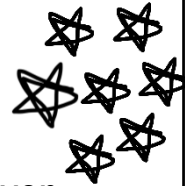
- Don't wait until the last minute before tryouts to hold these conversations.
- Remember in Texas, if the ARD committee cannot reach consensus, the parent must be offered the opportunity for a ten-day recess and then to reconvene the committee.
- Information may be needed from a physician or other private provider to determine appropriate accommodations.



Don't compare students to one another to determine available accommodations.

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## Medical Information?



- Keep in mind that all decisions are data driven. For a student with disabilities, Section 504 would expect that needed medical information is gathered as part of the assessment and determination on appropriate accommodations.
- Decisions related to a student's participation in extracurricular activities after it was discovered the student had asthma should have been made by the Section 504 committee. Duval County (FL) Schs., 66 IDELR 230 (OCR 2015)



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## Can't the decision be left up to the coach?



- OCR says you don't have to convene a 504 meeting. In special ed matters, you need an IEP meeting.
- Consider: Has the coach been trained well in Section 504?
- Consider: Will the coach make a good decision regarding equitable participation and access?
- How will the decision be documented?

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## Continued

Keep in mind, that general the conduct "rules to play" (e.g., no vaping, no discipline removals, etc.) may have to be modified for students with disabilities. For example, there is an obligation to address behavior that may interfere with a student's ability to participate in an outside activity.

For example, a school district could not simply say its aftercare program was "not equipped to handle children with extreme behavior issues" and deny participation to a student with disabilities. Elmore County (AL) Sch. Dist., 70 IDEL 162 (OCR 2017)



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## Do Students with disabilities automatically get to play?



No. "Equal opportunity to participate" does not mean every student with a disability gets the right to be on an athletic team, and it does not mean that school districts must create separate or different activities just for students with disabilities." In re: Dear Colleague Letter of Jan. 25, 2013, 62 IDELR 185 (OCR 2013).

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## Do Students still have to "make" the team?

Students can still be required to demonstrate the skills for the student to participate in a selective or competitive program or activity, as long as the selection or competition criteria are not discriminatory.

Blissfield (MI) Cmty. Schs., 62 IDELR 95 (OCR 2013).

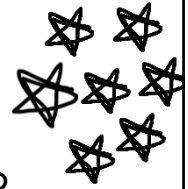


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## Do we have to provide any accommodation requested?



No – the accommodation does not have to fundamentally alter the program. But that is a pretty high bar. For example, a student was not entitled to a 1:1 aide in the afterschool skiing program or to participate in student council, but the District did have to consider other appropriate accommodations. Winooski (VT) School District, 46 IDELR 172 (OCR 2006).



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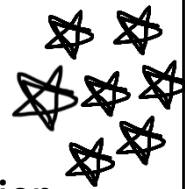
## What if the accommodation is expensive?

Expense is unlikely to result in a fundamental alteration of a school program under the Americans with Disabilities Act and Section 504. In a case from New Mexico, OCR determined that budgetary concerns were insufficient to deny accommodations.

Albuquerque (NM) Sch. Dist., 62 NDLR 85 , 120 LRP

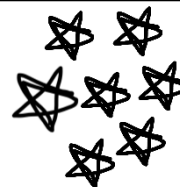


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## Can we require the parent to provide the accommodation or service?



No. Requiring a parent to attend an event or activity, or requiring a parent to furnish services such as transportation to or from an event for a student with disabilities can constitute disability discrimination. Capistrano Unified Sch. Dist., 82 IDELR 141 (SEA CA 2022) (a teen was denied FAPE when the school required the parent to furnish transportation for the student on a trip with the life skills class).



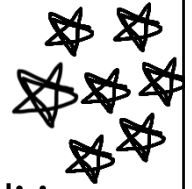
## Some Final Cautionary Tales



- A District engaged in discriminatory conduct when it sponsored field trips for students without disabilities but students with disabilities were only taken on trips that could be organized by teachers and funded through special education. Montebello (CA) Unified Sch. Dist., 20 IDELR 388 (OCR 1993)



## Continued



Denying a student participation due to a medical condition can violate Section 504. When a school refused to allow a student with diabetes to attend a field trip for fear she could not independently manage her diabetes, the school was found to have engaged in disability discrimination.

Eastern (OH) Local Schs., 70 IDELR 78 (OCR 2017)



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*The information in this presentation was created by **Walsh Gallegos Kyle Robinson & Roalson P.C.***

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